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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[EAC 02 294 51325]

Date: **OCT 04 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish that she had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that she has complied with all Citizenship and Immigration Services (CIS) requirements and that she has lived with her mother in the United States since August of 2000. The applicant also asserts her claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for parole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

On October 31, 2003, the applicant was requested to submit evidence establishing her continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. An affidavit from [REDACTED] which she stated that she had employed the applicant as a babysitter from February 1, 2001 to December of 2002;
2. An affidavit from German [REDACTED] in which he stated that the applicant and her mother had rented an apartment [REDACTED] Washington, DC from him from August of 2000 to December of 2003;
3. A home video preview agreement bearing the applicant's name with the date out as January 20, 2001 and the date in as February 10, 2001;
4. A rent receipt dated November 1, 2001 in the amount of \$450.00, signed by Mrs. [REDACTED] and bearing the name [REDACTED] as the renter of apartment [REDACTED] Washington, DC;

5. A utility bill from Washington Gas dated November 13, 2001 and bearing the name [REDACTED] with an address of [REDACTED] Washington, DC; and,
6. Two Pepco electric bills dated August 30, 2001 bearing the name [REDACTED] and October 31, 2003 bearing the name [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on April 20, 2004.

On appeal, the applicant resubmits affidavits written by [REDACTED] and [REDACTED], reasserts her claim of eligibility for TPS, and submits the following documentation:

7. An affidavit from [REDACTED] in which she states that the applicant is her daughter and that they have lived together in the United States since the year 2000.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001 and her continuous physical presence in the United States since March 9, 2001. [REDACTED] stated in his affidavit (No. 2 above) that he rented an apartment to the applicant and her mother and that he was enclosing the rent receipts to verify that statement. The record does not contain any rent receipts submitted by [REDACTED], Mrs. [REDACTED], not Mr. [REDACTED] signed the rent receipt that was submitted as evidence (No. 4 above). There has been no evidence submitted to explain this discrepancy.

The affidavits submitted by [REDACTED] and [REDACTED] (Nos. 1 and 2 above) appear to be in the same type font, thus bringing into question the authenticity of the documents and the statements made therein. The utility bills submitted are not in the applicant's name and thus cannot be used to establish her presence or residence during the requisite time period since February 13, 2001 and March 9, 2001. The home video receipt (No. 3 above) appears to be an altered document.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). It is further noted that the rent receipt and utility bills (Nos. 4, 5, and 6 above) for the premises known as [REDACTED] Washington, DC are all dated subsequent to the requisite time period.

The applicant has failed to establish that she has met the residence and physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.