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FILE: [REDACTED]
[EAC 01 165 53807]

Office: VERMONT SERVICE CENTER

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. The director subsequently reopened the matter twice and affirmed his prior decision. The matter is now before the Administrative Appeals Office (AAO) 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 initially denied the application on May 10, 2002, because the applicant failed to submit a local police clearance certificate from each jurisdiction in which she has lived since her arrival in the United States.

On June 7, 2002, the applicant filed an appeal from the director's decision. On appeal, the applicant provided additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite period.

The director reopened the matter on July 25, 2002, and affirmed his prior decision because the ground for denial had not been overcome.

On September 18, 2002, the applicant filed a Form I-765, Application for Employment Authorization. The director denied the application on January 16, 2003, because the applicant's TPS application had been denied and she was, therefore, no longer eligible for extension of her employment authorization.

On August 2, 2003, the applicant attempted to re-register for TPS. Her Form I-821 and her Form I-765 were rejected and returned to her on September 29, 2003, with a notice stating that she was not eligible to file an application for annual re-registration because her TPS application had been denied.

On October 3, 2003, the applicant once again applied for re-registration for TPS. Concurrently, she filed a motion to reopen the matter on October 10, 2003. On motion, the applicant stated that she has now married a Salvadoran citizen who has been granted TPS. She submitted additional evidence in an attempt to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On April 4, 2004, the director reopened the matter and affirmed his prior decisions because the grounds for denial had not been overcome.

On April 16, 2004, the applicant filed the instant appeal from the director's decision. On appeal, the applicant submits a statement.

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

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

8 C.F.R. § 244.1 defines “felony” and “misdemeanor:”

Felony means a crime committed in the United States, punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except: When the offense is defined by the State as a misdemeanor and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The record reveals that the applicant filed her Form I-821, Application for Temporary Protected Status, on April 2, 2001. On June 18, 2001, and again on July 25, 2001, the applicant was fingerprinted, but on both occasions the Federal Bureau of Investigation (FBI) report indicated that the applicant's fingerprints were unclassifiable.

On February 25, 2002, the applicant was provided with an opportunity to submit a local police clearance certificate for each jurisdiction in which she had resided for the past three years and the final court disposition of all arrests since her arrival in the United States. The applicant did not provide the requested documentation in her response to the notice.

The director denied the application on May 10, 2002, finding that the applicant had failed to submit the requested police clearance documents. The director has subsequently reopened the matter twice and affirmed his prior decision, finding that the applicant failed to overcome the ground for denial of the application.

On appeal, the applicant repeats her claim to have lived in the United States since "before February 13, 2001." The applicant further states that she misunderstood the director's reasons for denial and went to her local police station to be fingerprinted. The applicant states that she has not had any problems with local, state, or federal law enforcement authorities. She does not, however, submit police clearances from all jurisdictions in which she has resided since her arrival in the United States.

The applicant has had multiple opportunities to provide the requested police clearance documents, but she has failed to provide such documents as required. It is noted that the applicant appears to be attempting to prolong the appeal process indefinitely and outside of any remedies remaining available to her. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also must be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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.

ORDER: The appeal is dismissed.