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U.S. Citizenship
and Immigration
Services

MI

FILE:

[SRC 03 260 54436]

Office: TEXAS SERVICE CENTER

Date: **OCT 19 2005**

IN RE:

Applicant:

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center, and 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 denied the application because the applicant failed to establish her continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits a statement and additional evidence.

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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 TPS 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed her initial TPS application with Citizenship and Immigration Services (CIS), on September 16, 2003. Although the applicant filed her TPS application after the initial registration period had closed, the director determined that she is eligible for late initial registration as the spouse of an approved TPS registrant.

The burden of proof is upon the applicant to establish that she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from her own statements. 8 C.F.R. § 244.9(b).

On January 2, 2004, the applicant was requested to submit evidence establishing her eligibility for late initial registration under the provisions of 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001.

In response, the applicant submitted photocopies of the following documentation: her Marriage Certificate, indicating her marriage to Miguel Edgardo Lemus, on June 1, 1997, in El Salvador; a State of Georgia Birth Certificate for a child born to her on May 8, 2002; a letter dated January 13, 2004 from the Assistant Manager, The Hamptons at Lenox, Atlanta, Georgia, verifying the applicant's residence at [REDACTED] since November 10, 2000 through the date of the letter; a letter dated January 21, 2004, from the Parochial Vicar, Immaculate Heart of Mary Church, Atlanta, Georgia, confirming the applicant's participation in the church since December 12, 2000; a letter dated January 13, 2004, from the Owner, [REDACTED] Atlanta, Georgia, stating that the applicant worked as a cashier from December 20, 2000 through March 15, 2002; additional copies of her birth certificate with English translation; her El Salvadoran cedula dated November 18, 1996; and, her State of Georgia Identification Card issued on April 30, 2002.

With her initial TPS application, the applicant had also submitted photocopies of: her El Salvadoran electoral identification card; her cedula; birth certificate; Georgia Identification Card; and, a partial Residential Lease document listing the applicant as a resident at "[REDACTED]" for a term of two years "to commence on Oct. 15, 2000, and to end on Oct. [blank], 20002 [sic]."

The director determined that the applicant had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and, therefore, denied the application on August 23, 2004.

On appeal, the applicant states that she has proof of her residence and physical presence in the United States consisting of evidence from her employer, [REDACTED] with whom she returned to work after her child was seven months old, and medical bills. She asks for understanding in resolving her case. In support of the appeal, the applicant submits additional documentation consisting of: a menu from [REDACTED] and a business card from its owner, along with another copy of the January 13, 2004, letter from the owner; and, a printout of her medical record from Grady Health System, of an unspecified location, indicating her appointments between March 19, 2002 and May 28, 2004.

It is noted that the Residential Lease document and the letter from the Assistant Manager, The Hamptons at Lenox, Atlanta, Georgia, identified above, are inconsistent, as they indicate that the applicant resided at different addresses during the same timeframe. 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). Therefore, the applicant has not established that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

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.