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FILE: [REDACTED]
[EAC 01 195 55702]

OFFICE: VERMONT SERVICE CENTER

DATE: **SEP 16 2005**

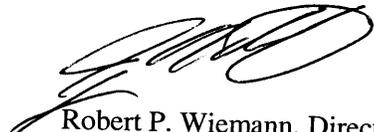
IN RE: Applicant: [REDACTED]

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, reopened, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 originally denied the application on December 3, 2003, because the applicant had failed to establish that she had continuously resided in the United States since February 13, 2001. The applicant appealed the director's decision on January 17, 2003. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the ground for denial had not been overcome and again denied the application on April 13, 2004.

On appeal, counsel 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 alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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).

The record shows that the applicant filed her TPS application on May 10, 2001. In support of her application, the applicant submitted an affidavit from [REDACTED] dated March 23, 2001, stating that she has known the applicant since January 2001 as her employee, a friend, and trustworthy person. On November 4, 2002, the applicant was requested to submit additional evidence to establish continuous residence since February 13, 2001. In response, the applicant submitted an affidavit from [REDACTED] dated January 25, 2003, stating that she has known the applicant for three years. Because the evidence furnished did not sufficiently show that the applicant had continuously resided in the United States since February 13, 2001, the director denied the application on December 3, 2003.

On motion, received January 17, 2004, the applicant submitted another affidavit from [REDACTED] dated December 15, 2003, stating that the applicant has been working for her as a house cleaner since June 2000 to the present.

The director noted that the statements from [REDACTED] contain conflicting information and, therefore, cannot be considered credible. The director concluded that the ground of denial had not been overcome and affirmed her decision to deny on April 13, 2004.

On appeal, the applicant submits yet another affidavit from [REDACTED] dated April 29, 2004, stating that the applicant worked for her from June 2000 to October 2000, and that she rehired the applicant in January 2001 to the present.

March 23, 2001, stated that she has known the applicant since January 2001 as her employee, a friend, and trustworthy person. She revised her claim on January 17, 2004, by stating that the applicant worked for her since June 2000. In an attempt to overcome the director's finding that her statements are not credible, Ms. [REDACTED] revised her claim on April 29, 2004, by stating that the applicant worked for her from June 2000 to October 2000, and again on January 2001 to the present. These revised claims are not persuasive and raise questions of credibility. Further, even if the applicant was in fact employed by Ms. [REDACTED] the applicant has failed to submit any evidence to support her claim, such as pay statements.

Moreover, the affidavits provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since June 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her claim; however, no such evidence has been provided.

The applicant has failed to establish that she has met the criteria for continuous residence in the United States since February 13, 2001, as described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application will be affirmed.

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.