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U.S. Citizenship
and Immigration
Services

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MI

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: SEP 30 2005

[EAC 02 293 53432]

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.


for 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 stated 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 denied the application because the applicant failed to establish she had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant requests that her case be reopened. She submits further documentation to establish continuous residence and continuous physical presence in this country.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, Ms. [REDACTED] and [REDACTED] are not authorized under the regulations at 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, she shall be considered as self-represented and the decision shall only be furnished to her.

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.

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 February 4, 2004, 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 as well as her date of entry into the United States. The applicant, in response, provided the following documentation:

1. An affidavit dated September 5, 2002 from [REDACTED] who states that the applicant is his friend and neighbor and that she was living at [REDACTED] New York from May 2000 to the present time.
2. An affidavit dated February 22, 2004 from [REDACTED] indicating that she is the owner of El Salvador Deli in Brentwood, New York and the applicant worked for her

business "since February 15, 2000." Ms. [REDACTED] states that the applicant's address [REDACTED]

3. A copy of the applicant's invoice dated February 8, 2001 from Giagante Express showing she shipped a package to a person in El Salvador.

The director determined that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on March 24, 2004.

On appeal, the applicant submits the following documentation:

4. An affidavit from [REDACTED] dated April 22, 2004 indicating that the applicant, his friend, has been in the United States since March 2001.
5. A second affidavit from [REDACTED] (formerly [REDACTED] indicating that she is the owner of El Salvador Deli in Brentwood, New York and the applicant worked for her business since February 15, 2000. Ms. [REDACTED] states that the applicant's address [REDACTED]
6. A partially cut off copy of the applicant's invoice dated February 6, 2001 from a furniture and warehouse corporation located in Bay Shore, New York.

Affidavits from acquaintances or family members are not, by themselves, persuasive evidence of residence or physical presence. On her Form I-821, Application for Temporary Protected Status, and on her Form I-765, Application for Employment Authorization, that were both signed on September 5, 2002, the applicant states that she entered the United States in April 2000. Therefore, the employment affidavits from [REDACTED] (formerly [REDACTED] are not credible because they indicate the applicant worked for the El Salvador Deli in Brentwood, New York since February 15, 2000, which is a date before the applicant claimed she entered this country. 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).

The applicant has not submitted convincing evidence to establish her continuous residence or continuous physical presence in the United States during the period since February 13, 2001, to September 9, 2002. She has, thereby, failed to establish 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 TPS will be affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. The applicant has provided a copy of her birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

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 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.

ORDER: The appeal is dismissed.