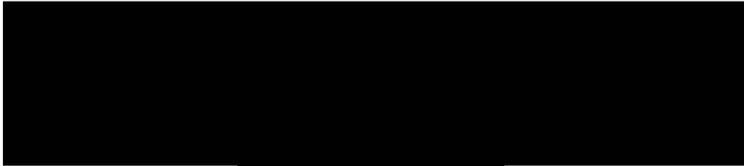


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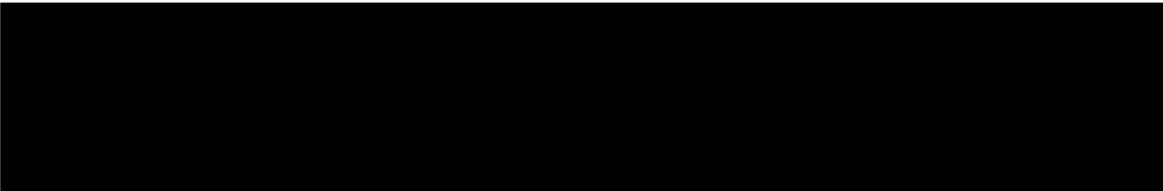
FILE: [Redacted] Office: VERMONT SERVICE CENTER  
[EAC 01 234 60298]  
[EAC 07 067 50005, motion]

Date: **MAR 12 2008**

INRE: 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:



**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. Wieman, Chief**  
Administrative Appeals Office

**DISCUSSION:** The Director, Vennont Service Center (VSC), denied the application. The Administrative Appeals Office (AAO) denied a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion is granted. The initial application will be reopened, *sua sponte*, and the appeal will be sustained.

The applicant is a native and citizen of El Salvador who seeks 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 did not establish her qualifying continuous residence and continuing physical presence. The AAO affirmed the director's decision and dismissed a subsequent appeal.

On motion, counsel for the applicant asserts that the additional evidence submitted establishes the applicant's qualifying continuous residence and continuous physical presence.

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 as 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 (0(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.

Persons applying for TPS offered to Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The burden of proof is on 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 reflects that the applicant filed a TPS application on July 26, 2001 (EAC 01) - during the initial registration period for Salvadorans. In support of her application, the applicant submitted photocopies of the following documents: the biographical page of her Salvadoran passport, issued in San Salvador on November 23, 2000; and, a notarized affidavit from her sister, attesting that the applicant had entered the United States on or about December 14, 2000, and that she had lived with her since her arrival in the United States.

On February 25, 2003, and again, on March 13, 2003, the director requested that the applicant submit further evidence of her continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. In response, the applicant submitted several documents including the following: a notarized affidavit from her husband, with translation; a letter from \_\_\_\_\_ attesting that it was his understanding that the applicant had regularly attended \_\_\_\_\_ es Catholic Church, in Arlington, Virginia, since December of 2000; a notarized letter \_\_\_\_\_, attesting that she had known the applicant since December 2000; and, a letter from \_\_\_\_\_ attesting that the applicant had been employed by American Painting and Janitorial Co, Inc., since June 11, 2001.

On May 13, 2003, the director denied the application, finding that the applicant had established her physical presence from March 13, 2001, to the date of filing, but that she had failed to establish her qualifying continuous residence. The applicant appealed the decision to the AAO.

On June 8, 2005, the AAO dismissed the appeal, finding that the applicant had submitted sufficient evidence to establish her continuous residence in the United States since July 20, 2001, but affirming the director's decision

that she had failed to provide her qualifying continuous residence. The AAO assigned little evidentiary weight to the letter from [redacted] stating that the pastor did not explain the origin of the information to which he attested, nor did he provide the address where the applicant resided during the period of her involvement with the church. The AAO denied the application for the additional reason that the applicant had not provided sufficient evidence to establish her qualifying physical presence.

On December 4, 2006, counsel for the applicant filed the current motion to reopen with additional evidence addressing the concerns of the AAO's June 8, 2005, decision.

On motion, the applicant submits [redacted] letter from [redacted] Parochial Vicar of Our Lady of Lourdes Catholic Church. [redacted] attests that the applicant was a member of this parish from December of 2000 until October of 2004, when she relocated with her family to Alexandria, Virginia. [redacted] attests that, while the applicant was a member of the church, she resided with her husband at [redacted] Arlington, Virginia, 22206. He also attests that the applicant's son was born in 2003 while she resided at this address. [redacted] attests that while the applicant was a member of the church, she was an active participant of the Spanish Young Adults Group and then an active member of the parish's Spanish Prayer Group. [redacted] attests that, although the applicant moved, she still maintains personal ties with some of the members of the church.

The letter from [redacted] attesting that the applicant had been employed by American Painting and Janitorial Co., Inc., Since June 11, 2001, is corroborated by a previously submitted pay stub from American Painting and Janitorial Co., Inc., indicating a hire date of June 11, 2001.

The letter from [redacted] does not explain the origin of the information to which he attested, but does provide [redacted] the applicant resided during the period of her involvement with the church. The address [redacted] provides for the applicant in his attestation letter is consistent with other information in the record of proceeding relating to the applicant's residence during the initial registration period. In addition, [redacted] provides details about important events in the applicant's life, such as the birth of her son and her relocation to Alexandria. Finally, [redacted] provides details about the applicant's activities in groups within the church, aside from just her membership in the church.

[redacted] attestation letter directly addresses the AAO's previous concerns about [redacted] letter, and, together with that letter, the employment letter and pay stubs from American Painting and Janitorial Co., Inc., and, the notarized affidavits from the applicant's sister and husband, shows residence and physical presence immediately prior to and during the initial registration period. Consequently, the applicant has submitted sufficient evidence to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be withdrawn.

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 met this burden.

**ORDER:** The motion is granted and the appeal is sustained.