

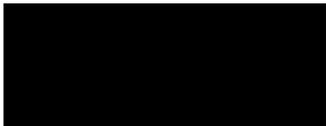
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

PUBLIC COPY



U.S. Citizenship
and Immigration
Services



M₁

DATE: **MAY 30 2012** Office: VERMONT SERVICE CENTER

FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that the affidavit from [REDACTED] is on the church's letterhead and contains an original signature. Counsel acknowledges that the rental lease did contain a typographical error, but it was not the applicant's fault. Counsel states that she is providing an affidavit from the landlord indicating that there was a typographical error on the lease and certifying the applicant's residence in his apartment during 2001.

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 Secretary 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 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.

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.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until September 9, 2013, 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 U.S. Citizenship and Immigration Services (USCIS). 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).

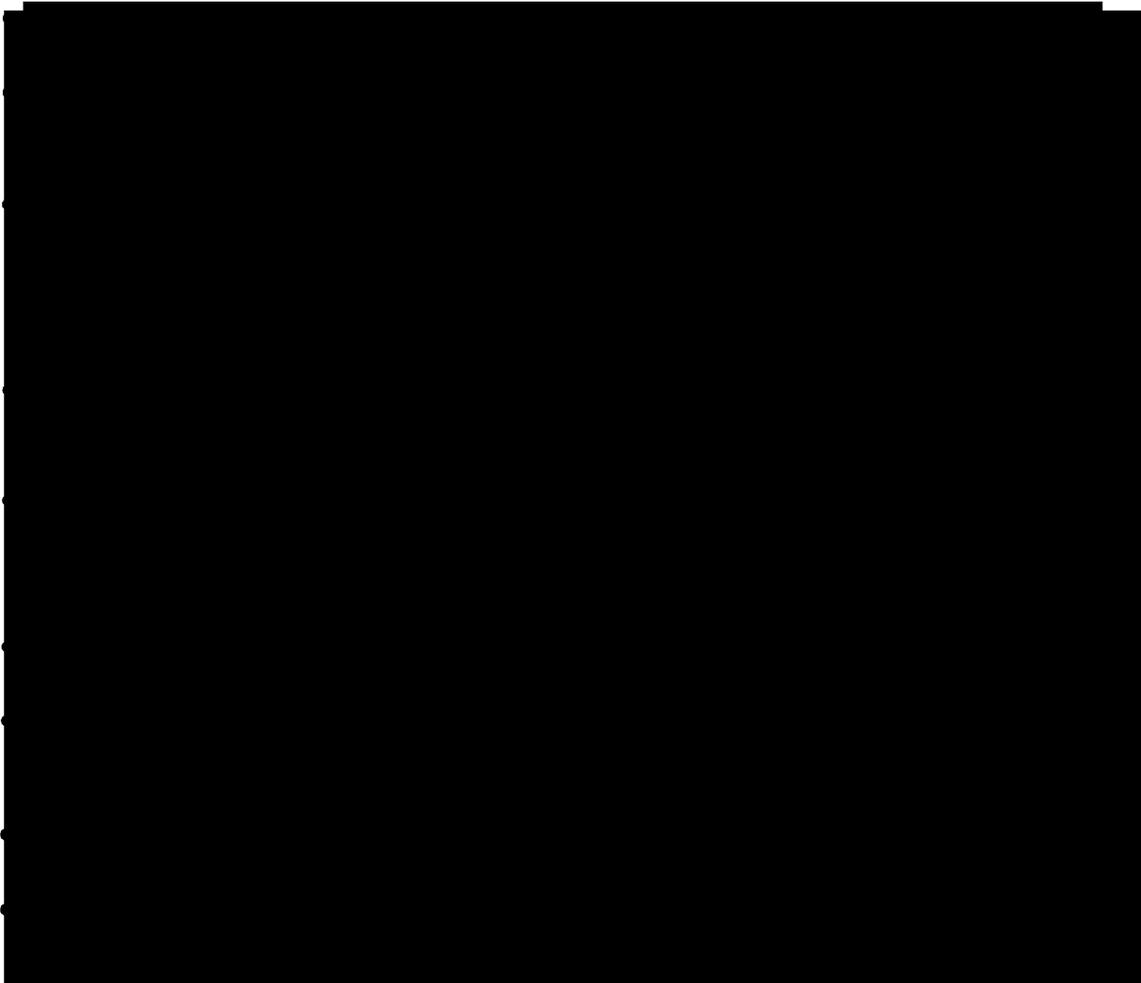
The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The applicant filed her initial TPS application [REDACTED] on July 27, 2002. On October 16, 2004, the director denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001. The applicant filed an appeal from the denial of that application. The AAO, in dismissing the appeal on June 26, 2006, concurred with the

director's finding. The AAO upon a *de novo* review also dismissed the appeal because the applicant had failed to establish continuous physical presence in the United States since March 9, 2001.

The applicant filed her second TPS application [REDACTED] on December 29, 2008. On March 12, 2009, the director denied the application because it was determined that the applicant had failed to establish she was eligible for late registration and had failed to establish her qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant filed an appeal from the denial of that application. The AAO, in dismissing the appeal on November 16, 2009, affirmed the director's findings regarding the applicant's failure to establish continuous residence and continuous physical presence. The AAO withdrew the director's finding regarding late registration eligibility as the applicant was a spouse of an alien currently eligible to be a TPS registrant.

Along with the current TPS application, the applicant submitted the following documents in an attempt to establish continuous residence and continuous physical presence in the United States during the requisite period:



- A house lease entered into between the applicant's spouse and [REDACTED] on July 2, 2008. The applicant's name is added as an occupant.

On September 15, 2011, the applicant was advised that: a) the lease entered into on January 1, 2001 was suspect as it ended on December 31, 2009; b) the affidavits, on their own, were not sufficient evidence to meet the residence and physical presence requirements; and c) her spouse had indicated on his TPS application filed on May 22, 2001, that she was residing in El Salvador. 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. The applicant, in response, provided the following:

- An additional affidavit from [REDACTED] who reaffirmed the applicant's employment as a housekeeper in her home from January 8, 2001 to September 23, 2004. The affiant indicated that she had personal knowledge of the applicant residing in the United States since December 1999.
- An additional letter dated October 1, 2011, from [REDACTED], who reaffirmed the applicant's active membership at [REDACTED] since January 2001.
- An additional letter dated September 28, 2011, from [REDACTED] who reaffirmed that the applicant has been visiting his office since June 22, 2001. The affiant provided copies of medical records dated June 22, 2001 November 5, 2007, August 24, 2009, and September 28, 2009.
- Medical documents dated October 12, 2007, September 11, 2009, and July 2, 2010.

The applicant also submitted an affidavit from her spouse, [REDACTED], who indicated that the applicant "entered the United States on December 15, 1999 and we lived together as husband and wife since that date." The affiant indicated that the information regarding his wife's residence in El Salvador on his initial application was incorrect. The applicant stated he did not write and speak English and that a notary in Paterson, New Jersey assisted in the completion of his application.

The director noted that there was no way to determine the veracity of the statements of the applicant's spouse and, therefore, his testimony was of little adjudicative value. The director determined that the letter from [REDACTED] was also of little adjudicative value because it was neither on the church's letterhead nor notarized. The director also determined that the affidavit and medical records from [REDACTED] only serve to establish the applicant's residence since June 22, 2001. The director concluded that the applicant had failed to submit sufficient evidence to establish her eligibility for TPS and denied the application on November 3, 2011.

On appeal, counsel submits an additional letter dated November 29, 2011, from [REDACTED] who once again attested to the applicant's membership since January 2001 at [REDACTED]. Counsel also submits an affidavit notarized November 29, 2011, from [REDACTED],

who indicates, that he is the owner of the property located at ██████████
██████████ asserts, in pertinent part:

I had submitted a original one year Lease on behalf of ██████████ and [the applicant] for renting the second floor of the property mentioned above from January 1, 2001 to December 31, 2001.

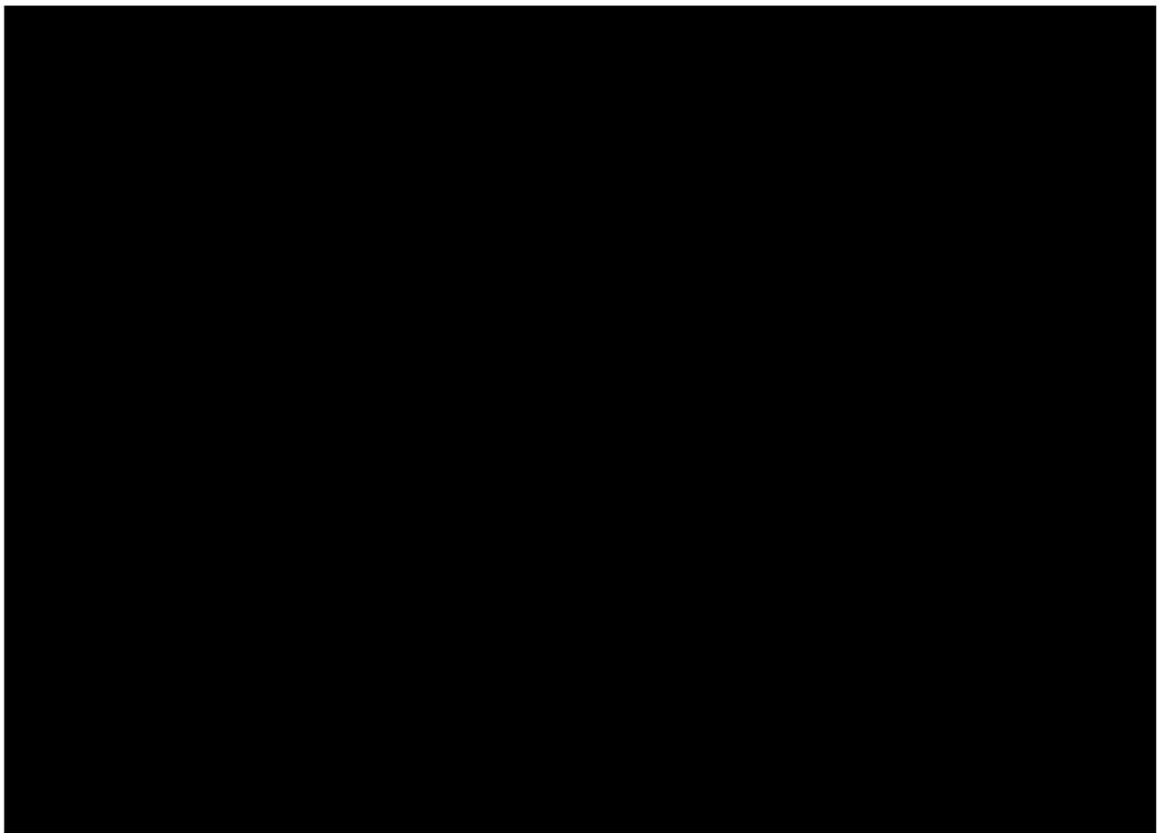
Inadvertently, the lease ending date showed in the above mentioned document was mistaken.

I am certifying that ██████████ and [the applicant] were renting the second floor apartment of my house and paying \$320.00 monthly per rent.

They live in my apartment and were my tenants until August of 2002.

The AAO, however, does not view the 2001 lease and affidavits attesting to the applicant's presence in the United States during 2001 as substantive to support a finding that the applicant entered and began residing in the United States before or by February 13, 2001, as inconsistent and contradicting statements have been submitted. Specifically:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.



Most importantly, the affiant does not explain the origin of the information to which she attests.

These factors raise significant issue to the legitimacy of the applicant's residence in the United States from 2001 through June 2002 and tend to establish that the applicant utilized documents in a fraudulent manner in an attempt to support her claim of residence and physical presence in the United States during the requisite periods. By engaging in such an action, the applicant has irreparably harmed her own credibility as well as the credibility of her claim of continuous residence and continuous physical presence in the United States for the requisite periods.

Doubt cast on any aspect of an applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. It is incumbent upon an 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I. & N. Dec. 582 (BIA 1988).

Given the numerous credibility issues arising from the documentation provided by the applicant, it is determined that the applicant has not met her burden of proof. 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.

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.