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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: Vermont Service Center

Date: APR 08 2004

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:

[Redacted]

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 by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 he 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 submitted a statement and evidence in support of the applicant's claim.

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 temporary protected status 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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.

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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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).

Along with his application, the applicant, through counsel, had submitted the following documentation:

1. Copies of his El Salvadoran birth certificate along with an English translation.
2. A copy of his Individual Account Statement dated December 31, 1998, from the Spartan Precision Machining Corporation Profit Sharing Plan, indicating that the applicant was hired on March 13, 1997.
3. A copy of the a notification from the Spartan Precision Machining Corporation Profit Sharing Plan, signed by the applicant on October 27, 1999.

On March 5, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. In response, the applicant, through counsel, provided the following documentation:

4. Copies of his Citibank banking card, New York State driver's license issued on July 8, 2002, and Freeport Recreation identification card.
5. A letter dated March 18, 2003 from Ms. Lidia Jordan, Manager of Urgent Express in New York, who stated that the applicant had been a frequent client of her company since October 2000.
6. A copy of Form W-2, Wage and Tax Statement, reflecting the applicant's 2002 income from Spartan Precision Machining.
7. A copy of the applicant's Earnings Statement from Spartan Precision Machining, dated March 14, 2003.
8. A copy of his insurance bill dated March 18, 2003, from State Farm Insurance Companies.
9. A copy of a bill dated February 13, 2003 from Freeport Electric.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 28, 2003.

On appeal, counsel for the applicant submitted the following documentation:

10. An employment letter dated March 17, 2003 from Mr. George Pappas, President of Spartan Precision Machining Corporation, who stated that the applicant was hired by his company on September 6, 2001.
11. A copy of the birth certificate of the applicant's son born on April 21, 2001 issued by the New York Department of Health.
12. A copy of the applicant's Earnings Statement dated September 21, 2001, from Spartan Precision Machining.
13. A copy of a detailed statement of the applicant's electric usage and payments from September 25, 2001 to March 11, 2002 for his apartment in Freeport, NY.
14. A copy of the applicant's 2001 Federal Income Tax Return.
15. A Statement of Bills Rendered from the Long Island Power Authority reflecting the applicant's bills and payments from April 29, 2002 to April 30, 2003.

The statement detailed in No. 5 above indicates that the applicant had been a "frequent client" of the Urgent Express in Freeport, New York. However, the applicant did not provide any evidence in support of this claim, such as receipts or business transaction records. It is reasonable to expect that the applicant would have some type of contemporaneous evidence in support of these statements. Further, the tax document detailed in No. 14 above may suggest that the applicant was in the United States during the year 2001. The burden is on the applicant to establish his residence since February 13, 2001, and physical presence since March 9, 2001.

While the document detailed in No. 2 above indicates that the applicant was hired by Spartan Precision Machining Corporation on March 13, 1997, it appears that the applicant subsequently left the employment of this company before being rehired on September 6, 2001, as reflected in the letter detailed in No. 10 above.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he 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 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.