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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**

M

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **AUG 02 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: 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 by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and the matter is now before the AAO on a motion to reconsider. The motion will be granted; the prior decision of the AAO will be affirmed.

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 noted that the applicant departed the United States on January 29, 2001, and was re-admitted at Los Angeles, California, on July 9, 2001. The director, therefore, denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant's father (The applicant is a minor child.) stated that the applicant's absence outside the United States did not disrupt his continuous residence and physical presence in the United States because the absence was brief, casual, and innocent.

The director of the AAO dismissed the appeal, based on a finding that the applicant's six-month absence outside the United States, in the absence of any evidence or explanation regarding the reason for his absence, could not be held to be brief, casual, or innocent.

On motion, the applicant's father submits a statement.

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 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).

On July 9, 2002, the applicant was requested to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In response, the applicant's father submitted evidence in an attempt to establish the applicant's continuous residence and physical presence during the requisite periods.

The director determined that the applicant had failed to establish continuous residence and physical presence in the United States during the requisite periods due to his absence outside the United States, and denied the application on October 29, 2002.

On appeal, the applicant's father asserted that his son's absence outside the United States was brief, casual, and innocent.

The director of the AAO dismissed the appeal, finding that the applicant's six-month absence outside the United States could not held to be brief, casual, and innocent.

On motion, the applicant's father states:

I continue to maintain that my departure of January 29, 2001 through July 9, 2001 was brief, casual and innocent. The purpose of my son[']s delay in return[ing] to the United States of America was due to the continuation and finalization of his medical treatment which was started prior to his arrival.

Citizenship and Immigration Services records reveal that the applicant first entered the United States on September 25, 2000, with stay authorized to March 24, 2001. He subsequently departed the United States on January 29, 2001, and was readmitted at Los Angeles, California, on July 9, 2001, with stay authorized to January 8, 2002.

In this case, the applicant was outside the United States for almost six months. A six-month absence outside the United States cannot be considered to be "brief, casual, and innocent" as defined at 8 C.F.R. § 244.1. While the applicant's father states on motion that the applicant was receiving medical treatment in Honduras during his absence, he does not submit any independent evidence to corroborate his statement.

It is concluded that the applicant has failed to establish that he has met the criteria for continuous residence and continuous physical presence 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 prior decision of the AAO is affirmed. The petition is denied.