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U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: Vermont Service Center

Date:

IN RE: Applicant:

[Redacted]

AUG 19 2014

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.

Cindy N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

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protect privacy of individual
involved in personal privacy

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 reasserted the applicant's claim of eligibility for TPS.

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.

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. 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).

In conjunction with an application for re-registration, the applicant provided affidavits from two acquaintances, Santos E. Zetino and Maridela Cordero, who testified to the applicant's residence and physical presence in the United States since November 20, 2000.

On May 27, 2003, the applicant was notified that the affidavits he had submitted were not sufficient to establish his qualifying residence and physical presence. 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, as well as an English translation of his Salvadoran birth certificate.

The applicant, in response, provided affidavits from two additional acquaintances, Julia Feliz and Alex Kaganowicz, who also testified to the applicant's residence and presence in the United States since November 20, 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 15, 2003.

On appeal, counsel reasserts the applicant's claim and submits additional supporting documentation. Counsel provides a photocopy of a bill issued to the applicant by [REDACTED] New York, on February 28, 2001, for services rendered on January 14, 2001. Counsel also submits a letter dated October 27, 2003, from Deacon [REDACTED] who states that the applicant has been a registered member of Our Holy [REDACTED] in Freeport, New York, since January 2001.

The affidavit from [REDACTED] little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the deacon does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

The applicant claims to have lived in the United States since November 20, 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the affidavits detailed above; however, the applicant has provided just a single billing statement from February 28, 2001. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements 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.

Beyond the decision of the director, it is also noted that the applicant has failed to provide an English translation of his Salvadoran birth certificate, nor has he provided any other form of identification. The applicant has, therefore, failed to establish his identity and nationality as required in 8 C.F.R. § 244.9(a)(1), and the application also may not be approved for this reason.

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.