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MAR 03 2004

FILE: [REDACTED] Office: Vermont Service Center Date:

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF PETITIONER: [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

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 remanded.

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 determined that 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. The director, therefore, denied the application.

On appeal, counsel asserts that at the time the applicant responded to a request for additional information, he provided all of the documentation he had at that time. According to counsel, the applicant was subsequently able to find the evidence required to demonstrate that he is eligible for TPS. That documentation is being provided on appeal.

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 [now the Secretary Department of Homeland Security (Secretary)] 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.

The term continuously physically present, as used 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 used 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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General, (now the Secretary,) announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary 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 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 March 27, 2002, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit evidence of his nationality. In response the applicant submitted a photocopy of his driver's license. He did not present evidence of his continuous presence and residence in the United States, or his nationality, as requested. The director therefore denied the application.

On appeal, counsel reasserts the applicant's claim and submits the following documentation:

1. A copy of the first page of the applicant's El Salvadoran passport identity page issued at Washington, D.C. on November 20, 2000, and;
2. A copy of the applicant's birth certificate, with translation.
3. Copies of the applicant's 2001 and 2002 local and federal tax returns and tax forms.
4. Photocopies of pay receipts dated: May 21, 2001; June 4, 2001; June 11, 2001; July 23, 2001; September 5, 2001, September 17, 2001, and, December 10, 2001.
5. Photocopies of a letter from the applicant's landlord.
6. Photocopies of an automobile insurance bill indicating that the premium period is January 28, 2001 to July 28, 2001.
7. A copy of an insurance identification card with an effective date of July 28, 2001.
8. Photocopies of cable bills dated April 20, 2001 and July 19, 2001.

9. Photocopies of a Sprint telephone bill dated May 24, 2001 and June 24, 2001.
10. A copy of part of a bank statement from SunTrust Bank dated July 9, 2001.

The passport and birth certificate establish the applicant's nationality. The 2001 tax information indicates that the applicant worked during 2001. The pay receipts reveal that the applicant was employed in 2001 from at least May 14, 2001. The letter from the applicant's landlord is dated February 23, 2001 and informs the applicant of a rent increase. The cable bills are dated April 20, 2001 and July 19, 2001. The phone bills indicate billing periods ending May 22, 2001 and June 22, 2001. The bank statement is dated July 9, 2001. Consequently, all of these documents help to establish that the applicant had maintained continuous physical presence in the United States since March 9, 2001.

Douglas B. Wyatt, identified as the Vice-President of TWI, Ltd. issued the employment letter. According to Mr. Wyatt, the company has employed the applicant since July 6, 1999. In addition, the automobile insurance bill lists the applicant's premium period as January 28, 2001 to July 28, 2001, and the automobile insurance identification card lists the effective dates from July 28, 2001 to January 28, 2002. These documents establish that the applicant continuously resided in the United States since February 13, 2001. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). The applicant has submitted sufficient evidence to overcome the findings of the director.

However, outside of the director's decision, CIS records indicate that the applicant was arrested on January 26, 2004, in Virginia, on an outstanding warrant, for the charge of murder at Dallas, Texas. Consequently, the case is being remanded so that the director can determine if the applicant is subsequently convicted of any charges and is therefore rendered ineligible because of his criminal record. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS offered to El Salvadorans. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361.

ORDER: The case is remanded for further action.