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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date:

OCT 01 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

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The application was denied by the Director, Texas 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 determined that the evidence furnished was insufficient to establish that the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations and since February 13, 2001. 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 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 and since March 9, 2001. 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 record reflects that the applicant filed his TPS application on August 7, 2001. The applicant was requested, in a notice of intent to deny dated January 22, 2003, to submit: (1) a photo identification; (2) evidence to establish that he has continuously resided in the United States since February 13, 2001; and (3) evidence to establish that he has been continuously physically present since March 9, 2001. The applicant, in response, provided copies of two handwritten receipts that had been previously furnished. The director reviewed these receipts and determined that they are unacceptable to establish residence and physical presence in the United States. She also noted that no other documents were included with the applicant's response to support his application. The director, therefore, denied the application.

On appeal, counsel submits a copy of a lease agreement for an apartment located at "217 #104," and signed by the applicant on January 31, 2000. This lease agreement is written in the Spanish language. No translation was included although the applicant was advised in the director's notice of intent to deny that "[a]ll documents in a language other than English must be accompanied by a translation to English. The translator must certify that he/she is competent to translate from the source language to English." 8 C.F.R. § 103.2(b)(3).

Additionally, although the lease agreement shows a street number and an apartment number, it does not show the street name, the city and the state where this apartment is located. Nor does the record show that the applicant had indeed resided at this street number and apartment. Furthermore, this lease agreement is insufficient to establish the applicant's continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001.

Counsel also submits copies of W-2 forms for the year 2001 based on the applicant's employment with [REDACTED] in Houston, Texas, and with [REDACTED] in Houston, Texas. While counsel states that the "applicant has been working in Houston and maintaining two domiciles, one in Dallas and one in Houston," no evidence was furnished to show that the applicant was, in fact, residing in Houston during his claimed period of employment. It is noted that Houston is approximately 450 miles from where the applicant claimed to have been residing in Dallas. Additionally, neither dates of employment nor letters from his employers were furnished to verify the dates in 2001 the applicant was actually employed.

The applicant has failed to establish that he met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision to deny the application will be affirmed.

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.