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

M1



FILE: [REDACTED]
[EAC 03 254 53010]

Office: VERMONT SERVICE CENTER

Date: AUG 11 2006

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant properly filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on September 11, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was

the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial TPS application, the applicant submitted a letter, dated September 8, 2003, stating that he was sixteen years old when he entered the United States without inspection on November 10, 1999, and that he was afraid to apply for TPS during the initial registration period for fear of being deported. On October 15, 2003. The applicant also submitted a letter, dated July 30, 2003, from his employer, LNK International, stating that he had been employed since October 31, 2002, and two affidavits from acquaintances attesting to the applicant's residence in the United States.

On October 15, 2003, the director requested the applicant to submit evidence establishing his eligibility for late registration. The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted a letter, dated October 24, 2003, from his [REDACTED] stating that the applicant has been living in the United States since November 1999, but was afraid to apply for TPS for fear of being deported.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 21, 2004.

On appeal, the applicant submits two additional affidavits from acquaintances attesting to the applicant's good moral character, and his residence and physical presence in the United States.

It is concluded that the applicant has failed to overcome the grounds of denial cited by the director. The record confirms that the applicant filed his TPS application after the initial registration period had expired. The applicant has submitted documentation in an attempt to establish his continuous residence and continuous physical presence in the United States. However, this documentation does not mitigate the applicant's failure to file his Form I-821 within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

Furthermore, the documentation submitted by the applicant does not include sufficient corroborative evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Letters and affidavits from relatives and acquaintances are not, by themselves, persuasive evidence of residence and physical presence. The applicant claims to have lived in the United States since November 10, 1999. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim; however, the only such evidence presented is an employment letter showing the applicant's employment well-beyond the dates required to establish continuous residence and continuous

physical presence. 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.