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**U.S. Citizenship  
and Immigration  
Services**

**MI**



FILE: [REDACTED]  
[EAC 03 001 50528]

Office: VERMONT SERVICE CENTER

Date: **AUG 16 2005**

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.

A handwritten signature in black ink, appearing to read "R. 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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 his nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief statement and 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on September 6, 2002. At the time of filing his application, the applicant indicated that he had never used a social security number and that he had not used any other name. In support of his initial TPS application, the applicant submitted the following documentation:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. Two letters from acquaintances;
3. Photocopies of earnings statements issued to [REDACTED] Social Security number [REDACTED] by CAP Industries, Inc., Beltsville, Maryland, dated September 2001 to January 2002; and,
4. A photocopy of a 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued by CAP Industries, Inc., to [REDACTED]

On October 28, 2003, the applicant was requested to submit additional evidence to establish his nationality. He 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:

5. A photocopy of his El Salvadoran birth certificate, with English translation;
6. A photocopy of a Maryland driver's license, issued in February 2003;
7. "Lease Agreement Renewal" documents, dated January 31, 2001 to January 30, 2002; January 31, 2002 to January 30, 2003; and January 31, 2003 to January 30, 2004;
8. A photocopy of a 2002 IRS Form W-2, issued to [REDACTED]
9. A photocopy of a 2002 Form 502 Resident, Maryland Tax Return, in the name of [REDACTED] Social Security number [REDACTED]
10. Photocopies of generic, hand-written cash receipts for "legal matters," dated in 2001;
11. Photocopies of earnings statements issued to [REDACTED] by CAP Industries, Inc., dated December 2002 and January 2003; and,
12. Photocopies of earnings statements issued to the applicant, social security number [REDACTED] dated January 2003 to October 2003;

The director noted that the photocopies of his birth certificate did not contain an official seal on the same side as the biographical information, and that the applicant had failed to establish that he and [REDACTED] are the same person. The director concluded that the applicant had failed to establish his nationality, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on February 4, 2004.

On appeal, the applicant submits the following additional documentation:

13. A photocopy of the identification page from his El Salvadoran passport, issued in Washington, D.C., on November 26, 2002;
14. A photocopy of his El Salvadoran birth certificate, containing a notarial stamp, with English translation;

15. A letter stating that he had used the name [REDACTED] because he did not have employment authorization;
16. A letter, dated February 24, 2004, from CAP Industries, Inc., stating that the applicant had been employed by the company since March 5, 2001;
17. A photocopy of an un-translated letter.

Based on a review of the documentation submitted, it is concluded that Nos. 1, 5, 6, 13, and 14, above, are sufficient to establish that the applicant's nationality and identity. Therefore, the director's decision to deny the application based on the applicant's failure to establish that he is a national of El Salvador will be withdrawn.

The applicant claims to have entered the United States on January 25, 2001, and to have continuously resided in the United States since February 13, 2001, and have been continuously physically present since March 9, 2001, to the date of filing his TPS application on September 6, 2002. It is reasonable to expect that he would have a variety of contemporaneous evidence, as described in 8 C.F.R. § 244.9, to support this claim. Letters from acquaintances (No. 2, above) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The employment letter (No. 16) has 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)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any). No. 17 cannot be considered as it is an un-translated document.<sup>1</sup> Nos. 3, 4, 8, 9, and 11 are in another person's name, with another person's Social Security number. It is noted that, at the time of filing his initial TPS application, the applicant indicated that he had never before used a Social Security number. He also did not indicate that he had ever used another name. The self-serving affidavit (No. 15) provided by the applicant in an attempt to explain that the documents are his does not constitute sufficient objective evidence that he and [REDACTED] are one and the same person. Furthermore, the documentation contained in No. 12 is dated after the dates required to establish continuous residence and continuous physical presence.

The only documentation submitted by the applicant in his name, and covering the requisite time periods, are Nos. 7 and 10, above. These documents are not official documents, are not certified, and are not supported by corroborative evidence.

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous 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 on these grounds will be affirmed.

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<sup>1</sup> Any document containing a foreign language submitted to CIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

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.