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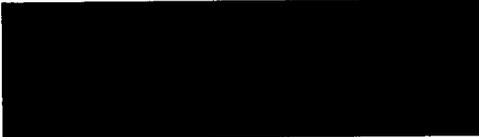
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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Services

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**MI**



FILE: [REDACTED]  
[EAC 03 060 52341]

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The director subsequently dismissed a motion to reopen the case. The case 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.

On May 21, 2003, the director determined that the applicant had failed to establish he is eligible for late registration. The director also determined that the applicant had failed to establish his continuous residence in the United States since February 13, 2001.

On August 11, 2003, the applicant filed a motion to reopen the director's decision. On February 11, 2004, the director dismissed the applicant's motion and reaffirmed her decision to deny the application. The applicant filed an appeal from that decision on March 15, 2004.

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 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 § 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 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 filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on October 7, 2002.

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 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 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 Form I-821, the applicant submitted:

1. A photocopy of the identification page from his El Salvadoran passport, issued in El Salvador on February 26, 2002;
2. A photocopy of an extract of his El Salvadoran birth certificate, with English translation; and,
3. An affidavit, dated September 7, 2002, from [REDACTED] stating that the applicant had resided in the United States since November 10, 2000.

On March 31, 2003, the director requested the applicant to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). 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:

4. An affidavit, dated April 8, 2003, from [REDACTED] stating that the applicant had established residence in the United States as of February 12, 2001; and,
5. An affidavit, dated April 8, 2003, from [REDACTED] stating that the applicant is his cousin and had resided at [REDACTED] since November 2000.

The director determined that the documentation submitted was not sufficient to establish the applicant's qualifying continuous residence in the United States during the requisite time period. The director also determined that the applicant had failed to submit any evidence to establish his eligibility for late registration. The director denied the application on May 21, 2003. The director clearly advised the applicant that any appeal of that decision must be filed within thirty-three days.

On August 11, 2003, the applicant filed an appeal of the director's decision. In support of his appeal, the applicant resubmitted photocopies of documentation (Nos. 1, 4, and 5, above) previously provided. Because the appeal was filed later than the prescribed period of thirty-three days, the director rejected the appeal. However, the director accepted the appeal as a motion to reopen.

The director again determined that the applicant had failed to establish his eligibility for late registration and had failed to establish his qualifying continuous residence in the United States since February 13, 2001. The director dismissed the applicant's motion on February 11, 2004. The applicant has now filed an appeal of that decision.

On appeal, the applicant states that he has been present in the United States and has established a residence as of February 13, 2001, and March 9, 2001. In support of the appeal, the applicant submits the following additional documentation:

6. Receipts, dated December 1, 2000 to March 1, 2001, issued to [REDACTED] for rental of a room, at [REDACTED] New York.

The first issue to be addressed in this proceeding is whether the applicant has established that he is eligible for late registration.

The record confirms that the applicant filed his TPS application after the initial registration period had expired. Although the applicant has submitted documentation in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States, 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). Consequently, the director's decision to deny the application for failure to establish his eligibility for late registration will be affirmed.

The second issue to be addressed in this proceeding is whether the applicant has established his qualifying continuous residence in the United States since February 13, 2001.

The applicant claims to have continuously resided in the United States from his claimed date of entry on November 10, 2000, to the date of filing his TPS application on October 7, 2002. It is reasonable to expect that he would have a variety of contemporaneous evidence to support these claims. Affidavits from acquaintances (Nos. 3, 4, and 5, above) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence.

There are discrepancies noted in the documentation presented by the applicant concerning his date of entry and address in the United States subsequent to entry. First, No. 1, above, confirms that the applicant's passport was issued in El Salvador on February 26, 2002, more than one year and three months after his claimed date of entry into the United States. Second, No. 5 asserts that the applicant lived in Bell Port, New York, from November 2000 to April 2003, while No. 6 asserts that he lived in Medford, New York, from December 2000 to March 2001. These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

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 requirement described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application on this ground, as well, will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001. Therefore, application may also not be approved for this reason.

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.