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FILE: [REDACTED]
[EAC 02 206 5481]

Office: Vermont Service Center

Date: **DEC 14 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
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 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 applicant failed to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant states that he is a minor, and that his residence in the United States has been established through his mother who was granted TPS status. The applicant contends that it has long been settled that a "minor's domicile is the same as that of its parents, since most children are not legally capable of forming the requisite intent to establish their own domicile."

While the applicant appears to have been previously represented, the record does not contain a Form G-28, Notice of Entry of Appearance. Therefore, the decision will be furnished only to the applicant.

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 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.

- (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 condition described in paragraph (f)(2) of this section.

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. 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. 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.

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 announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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 or she meets the above requirements. Applicants shall 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 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).

The record reflects that the applicant submitted his application for TPS on May 30, 2002. He stated on the application that he entered the United States without inspection in June 2001.

On July 10, 2002, the applicant was requested to submit evidence to establish that he had continuously resided in the United States as of February 13, 2001. In response, the applicant submitted a letter from an attorney who stated that the applicant's mother had applied for TPS, and that the applicant had established a domicile in the United States as of February 1999, and was eligible for TPS based on his mother's purported continuous residence and physical presence in the United States since that time.

On December 6, 2002, the director concluded that the applicant had failed to establish his qualifying continuous residence in the United States during the requisite period and denied the application.

Citing *Rosario v. INS*, 962 F.2d 220 (2nd Cir. 1992), the applicant, on appeal, asserts that his own residence in the United States has been established, based on his mother's continuous residence in the United States since February 13, 2001. The alien, in *Rosario v. INS*, was applying for relief from deportation based on his parent's unrelinquished domicile of seven consecutive years. The facts of that case, however, do not correspond to the applicant's circumstances. The applicant, in this case, is applying for TPS benefits. Pursuant to Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, an alien who is a national of a designated state is eligible for temporary protected status only if such alien establishes that he or she has met the continuous residence and continuous physical presence criteria for TPS. The applicant stated on the Form I-821, Application for Temporary Protected Status, that he did not enter the United States until June 2001. Therefore, he could not have met the requirements of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

As concluded by the director in his decision, every TPS applicant must fulfill all the requirements in order to gain TPS status; status cannot be acquired through any other person. The applicant has, therefore, failed to establish that he has met 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 will be affirmed.

The burden of proof is upon the applicant to establish 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.