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

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M

[REDACTED]

FILE: [REDACTED]
[EAC 01 226 53104]

Office: VERMONT SERVICE CENTER

Date: FEB 02 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:

[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.

Handwritten signature of Robert P. Wiemann in black ink.

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 had continuously resided in the United States since February 13, 2001.

On appeal, counsel for the applicant submits a brief statement.

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 filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on July 9, 2001.

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).

In support of his initial Form I-821, the applicant submitted the following:

1. A photocopy of an extract of his El Salvadoran birth certificate, with English translation, issued in El Salvador on April 2, 2001;
2. A photocopy of his El Salvadoran personal identification card (*cédula*), with no English translation; and,
3. A letter from [REDACTED] dated June 16, 2001, stating that the applicant "is renting a room for \$200 dollars [sic] at [REDACTED] Gaithersburg, MD. He has been living here at the present address since November, 2000."

On December 4, 2002, the applicant was 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 the following:

4. A letter from [REDACTED] dated February 9, 2003, stating that the applicant rented a room from him at [REDACTED] Gaithersburg, Maryland, from October 2000 to May 2002;
5. A letter from [REDACTED] Maryland, stating that the applicant was employed from April 11, 2001, until his resignation on August 12, 2002;
6. A photocopy of a payroll statement from [REDACTED] for the two-week pay period ending July 13, 2002; and,
7. A letter from the Social Security Administration, Rockville, Maryland, indicating that the applicant applied for a social security card on September 25, 2001.

The director found that the applicant had provided information to show that he had been physically present in the United States after March 9, 2001. However, the director also determined that the documentation provided was not sufficient to establish the applicant's qualifying continuous residence in the United States since February 13, 2001. The director denied the application on May 19, 2003.

The director noted in his denial that the applicant had submitted two letters, from different persons, regarding his apartment rental. The director incorrectly stated that No. 3, above, indicated that the applicant was the landlord, rather than [REDACTED]. On appeal, counsel notes the director's error and states that the only evidence submitted concerning the applicant's rental of the apartment in Gaithersburg was from [REDACTED].

The applicant claims to have lived in the United States since November 1, 2000. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. The employment letter (No. 5) 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 period(s) of layoff (if any), and the applicant's duties with the company. Nos. 6 and 7 are dated well after the dates required to establish TPS eligibility.

There are discrepancies in the record pertaining to Nos. 1, 3, and 4. No. 1 was issued in El Salvador, more than five months after the date of the applicant's claimed entry into the United States. Nos. 3 and 4 indicate that two different persons claim to have rented an apartment, at the same address, to the applicant during an overlapping time period. These discrepancies have not been explained satisfactorily and call into question 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 applicant's claim. 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). Furthermore, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is determined 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(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that, beyond the decision of the director, the applicant has not submitted sufficient evidence to establish that he has continuously resided in the United States since December 30, 1998, and has been continuously physically present since January 5, 1999. 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.