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U.S. Citizenship  
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Services

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FEB 14 2005

FILE:

[SRC 01 181 69665]

Office: Vermont Service Center

Date:

IN RE:

Applicant:

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.

for 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 denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States from March 9, 2001, to the date of filing his application.

On appeal, the applicant submits additional evidence in support of his claim.

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.

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. 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).

On April 30, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The director denied the application on October 8, 2003, because the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001, to the date of filing his application. The director noted in his decision that the record did not contain a response to the April 30, 2003 notice; therefore, the application was denied.

A review of the record reflects that the applicant did respond to the director's April 30, 2003 notice; however, he submitted his response along with a Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), received by the VSC on June 27, 2003. The director erred by stating that the applicant did not respond to his request, as it appears the applicant had responded and filed a Form I-290B along with his response.

On appeal, the applicant states that he already submitted an appeal notice and submits the following documentation: an affidavit dated October 23, 2003, from [REDACTED] who stated that the applicant had resided with her from July 2000 to September 2001, at [REDACTED] copies of [REDACTED] Employment Authorization card and Georgia State Identification Card; a copy of the applicant's Fingerprint Notice dated May 31, 2001; a copy of the previously filed Form I-290B along with money order receipts dated June 21, 2003; a copy of his airline ticket passenger receipt dated September 8, 2001, and boarding pass reflecting a flight from Atlanta, Georgia to Washington, D.C.; a copy of a Western Union money transfer receipt dated March 2, 2002; an unsigned employment letter dated April 6, 2001, from [REDACTED] Vice President of Southern Foundation Finishers, Inc., who stated the applicant has been employed by his company since October 2000; a copy of a letter from the Texas Service Center dated July 11, 2001 regarding his employment authorization card; and copies of his El Salvador voter's registration card and Maryland State Identification Card issued on March 1, 2003.

The statements provided by [REDACTED] regarding the applicant's claimed presence in the United States are not supported by corroborative evidence covering the requisite time periods for continuous residence and continuous physical presence in the United States. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. Further, the employment letter from [REDACTED] 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 [REDACTED] does not provide the address where the applicant resided during the period of his employment, nor is the letter notarized or in affidavit form. In addition, the remaining documentation provided by the applicant on appeal, all post-date the requisite time periods for El Salvador TPS. The applicant claims to have lived in the United States since July 15, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence in support of his continuous residence and continuous physical presence in the United States. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and 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.

An alien applying for TPS 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.