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FILE: [REDACTED] Office: Vermont Service Center Date: FEB 28 2005
[EAC 03 009 52906]

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.

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 been continuously physically present in the United States from March 9, 2001, to the date of filing his application.

On appeal, the applicant asserts his claim of eligibility for TPS and submits 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.

- (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. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 11, 2002.

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 August 20, 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. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant failed to establish he had been continuously physically present in the United States since March 9, 2001, to the date of filing his application. Therefore, the director denied the application on October 24, 2003.

On appeal, the applicant submits the following documentation in support of his claim of eligibility: a letter dated November 10, 2003, from Reverend [REDACTED] Pastor of St. Rose Rectory, who stated that the applicant has been a parishioner of his church; an affidavit dated November 11, 2003, from [REDACTED] who stated that the applicant has been living in the United States before February 13, 2001; an affidavit dated November 11, 2003, from [REDACTED] who stated that the applicant has been living in the United States before February 13, 2001; a letter dated November 6, 2003, from [REDACTED] regarding the applicant's gift to the MGH Fund recorded on September 24, 2003; copies of the applicant's checking and savings account statements for the period September 26, 2003 to October 28, 2003; a copy of the applicant's State of Massachusetts driver's license; a copy of the applicant's medical card for the Massachusetts General Hospital; a copy of the applicant's bank statement dated October 31, 2003; copies of certificates reflecting successful participation in English as a Second Language program from September 2002 to March 2003; and copies of the applicant's registration statement and registration form dated August 25, 2003, from Bunker Hill Community College.

The affidavit from Pastor [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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the period of the applicant's involvement with the church. The statements provided by [REDACTED] and [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. In addition, the letter from [REDACTED] the copies of the applicant's bank statements, the certificates of successful participation in the English programs, and the copies of the applicant's registration form and statement from Bunker Hill Community College, all post-date the requisite time periods for El Salvadoran TPS. It is determined that the applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States since March 9, 2001, to the date of filing his application. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence during the requisite time periods. 8 C.F.R. § 244.2 (c). Therefore, the application will also be denied for this reason.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she 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 he or she 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). In addition, beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. Therefore, the application will also be denied for this reason.

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.