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**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: VERMONT SERVICE CENTER

Date: JUL 01 2005

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.

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 his continuous residence and his continuous physical presence in the United States during the requisite periods.

On appeal, the applicant's mother provides a brief statement and some additional documentation.

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 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 conditions described in paragraph (f)(2) of this section.

The issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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 August 20, 2003.

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 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).

In a notice of intent to deny, dated September 30, 2003, the applicant was requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The applicant was also requested to submit evidence to establish his eligibility for late registration.

The director found that the documentation submitted, in response to the notice of intent to deny, established the applicant's eligibility for late registration. However, the director found that the documentation did not establish the applicant's continuous residence and his continuous physical presence in the United States, during the requisite timeframes. The director noted that the applicant submitted two pages of copies of his mother's TPS application, filed April 17, 2001, which shows that the applicant was residing in El Salvador at that time. Based on this evidence, the director found that the applicant's TPS application showing the applicant's entry into the United States as September 2000, was "incorrect." The director also noted "all other evidence submitted only shows your presence since March of 2003."

On appeal, the applicant's mother states that she put her son's name on her TPS application, and would like to know the status of her son's case. The applicant's mother submits: a copy of the Service's Form I-797C, Notice of Action, dated March 26, 2004, indicating that the applicant's Form I-290B, Notice of Appeal, has been received; a copy of Form I-797, Notice of Action, dated June 9, 2004, indicating that the applicant's Form I-290B has been forwarded to the Administrative Appeals Office in Washington, DC; a one page copy of her I-765, Application for Employment Authorization; a copy of page 2 of her Form I-821, Application for Temporary Protected Status, which lists the applicant as one of her children, and showing his residence as El Salvador; a copy of a notice, dated March 28, 2003, from the Internal Revenue Service addressed to the applicant; a doctor's note pertaining to the applicant, dated December 2, 2000; several school documents for 2003, which were previously submitted; and, one foreign language document not accompanied by an English translation. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation which has been certified by a competent translator.

The previously submitted documentation presented on appeal, and the applicant's mother's statement that her son was included on her application, is not additional documentary evidence to show that the applicant has been continuously physically present and continuously residing in the United States during the requisite timeframes. As stated by the director, the majority of the documentation contained in the record is dated in the year 2003. In addition, the applicant's mother's application, which was signed and dated by her on April 17, 2001, shows the applicant's residence as being El Salvador. This contradicts the applicant's TPS application, which shows his date of entry into the United States as "9/2000." If the applicant was residing in El Salvador in April of 2001, it has not been explained as to how he could have been continuously physically present and continuously residing in the United States since September 2000. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*, 582, 591.

The applicant has failed to provide sufficient evidence 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 on these grounds will be affirmed.

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.