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



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FILE:



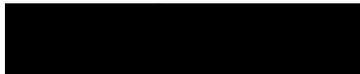
Office: Vermont Service Center

Date: **JUL 18 2005**

[EAC 02 060 52011]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits evidence in support of his claim of eligibility for TPS.

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 November 4, 2002, 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 applicant was also requested to submit evidence to establish that he is a citizen or national of El Salvador. In response, the applicant submitted a copy of his El Salvadoran personal identification card. The applicant, however, did not submit any evidence to establish his continuous residence in the United States during the requisite time period. On May 13, 2003, the director, therefore, denied the application.

On May 22, 2003, the applicant filed a timely appeal with the VSC; however, the director rejected the appeal on January 29, 2004, because the Form I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU) was not signed by the applicant. The director informed the applicant that he must submit a new appeal with the appropriate fee. The applicant submitted another appeal on February 25, 2004, which is now before the AAO.

On appeal, the applicant submits a copy of his 2003 U.S. Individual Income Tax return in support of his eligibility for TPS. In addition, the record of proceedings contains the following documentation submitted by the applicant along with his previously filed appeal: an employment letter dated May 17, 2003, from [REDACTED] Director of Human Resources at NBTY in Bohemia, New York, who stated that the applicant had been an employee of NBTY, Inc. since July 17, 2000; and copies of the applicant's Employment Authorization cards issued on January 25, 1995, March 1, 1996, and March 2, 1997.

The tax document submitted by the applicant, at best, reflects income earned during the year 2003, which falls after the requisite time period for continuous residence. Also, the employment letter from Ms. [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. Also, the employment letter is not in affidavit form or notarized, and it appears that the [REDACTED]'s signature is computer generated. Further, the employment letter is not supported by corroborative evidence such as paycheck stubs, or earnings statements, regarding his claimed employment period with NBTY, Inc. The copies of the applicant's employment authorization cards may indicate that the applicant may have been in the United States during the years 1995, 1996 and 1997; however, this evidence pre-dates the beginning of the requisite time period by nearly four years. 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 continuous residence requirements described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status for this reason 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 physical presence during the requisite time periods. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

It is also noted that the applicant claimed on his applications for temporary protected status and employment authorizations that he has lived in the United States since September 1994. However, the record of proceedings contains a copy of the applicant's personal identification card [REDACTED] issued to him in El

Salvador on October 23, 1997. It appears that the applicant had returned to El Salvador since his claimed entry into the United States in September 1994.

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.