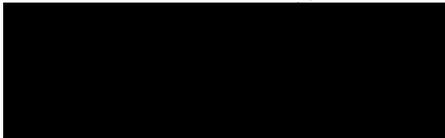


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U.S. Citizenship
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Services



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FILE: [REDACTED]
[EAC 02 281 52070]

Office: Vermont Service Center

Date: JUN 10 2005

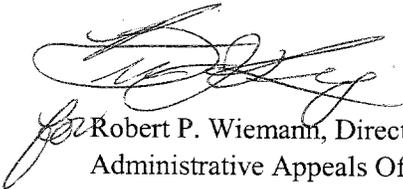
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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 his qualifying continuous residence in the United States during the requisite period.

On appeal, the applicant submits a statement and documentation in support of his 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 July 11, 2003, the applicant was requested to submit evidence establishing his residence in the United States as of February 13, 2001. The director noted in his request that the applicant submitted documentation containing discrepancies regarding the applicant's claimed continuous residence in the United States. In response, the

applicant submitted some evidence in an attempt to establish his continuous residence in the United States during the request time period. The director, however, determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and denied the application on August 20, 2003. The director noted in his denial that the applicant's passport was issued to him in El Salvador on June 4, 2002, and that the record did not contain evidence of the applicant being granted advance parole to travel to El Salvador. The director also noted that certain documentation submitted by the applicant with his TPS application were contradictory.

On appeal, the applicant states that he entered the United States in February 2001. The applicant also states that he had left the United States in June 2001 and returned to the United States in July. The applicant also submits the following documentation: a copy of a letter dated August 19, 2002, from Father [REDACTED] Pastor of the Most Holy Redeemer Parish in East Boston, Massachusetts, who stated that the applicant has been a member of his congregation since January 2001; a copy of an affidavit dated August 24, 2002, from Mr. [REDACTED] who stated that he has known the applicant in El Salvador and when the applicant came to the United States in February 2001; and copies of the applicant's deposit tickets dated March 4, 2001 and April 5, 2001.

The letter from Father [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 address where the applicant resided during the period of his involvement with the church. It is also noted that Father [REDACTED] had indicated that the applicant had been a member of his congregation since January 2001; however, the applicant claimed that he did not enter the United States until February 3, 2001. The director also noted this discrepancy in his July 11, 2003 notice and in his denial of the application; however, the applicant has not provided any explanation for the above inconsistencies. 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. 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 (BIA 1988). The applicant has still failed to submit any objective evidence to explain or justify the above noted discrepancies.

The applicant, on appeal, also states that he had left the United States in June 2001 without inspection and re-entered the United States in July. However, the applicant did not fully explain the reason for his departure from the United States. The record reflects that the applicant was issued a passport in El Salvador on June 4, 2002. Therefore, he could not have met the requirements that he had continuously resided in the United States since February 13, 2001. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). 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 physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). 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.