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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 03 097 52262]

Office: Vermont Service Center

Date: JUN 21 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.

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 claims to be 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on February 5, 2003. That application was denied on June 23, 2003, for failure to respond to a request for evidence to establish his eligibility for TPS. The applicant filed a motion to reopen his application on July 7, 2003. On October 3, 2003, the director sent another notice of denial indicating that the applicant failed to establish eligibility for late initial registration.

On October 22, 2003, the applicant filed an appeal from the director's October 3, 2003 decision which is now before the AAO. 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.

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 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).

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 4, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The record did not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on June 23, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant filed a motion to reopen his application on July 7, 2003. Along with his motion, the applicant submitted some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Subsequently, the director determined that the applicant failed to establish his eligibility for TPS late registration and denied the application on October 3, 2003.

The first issue in this proceeding is whether the applicant is eligible for late registration.

On appeal, the applicant submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue 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, to the date of filing his application.

On appeal, the applicant submits the following documentation: an employment letter dated July 14, 2003, from Ms. [REDACTED], General Manager of [REDACTED] in Martinsville, New Jersey, who stated that the applicant had been employed by her company for six months beginning on July 17, 2002; a copy of an affidavit dated June 28, 2003, from Mr. [REDACTED] who stated that the applicant had rented at [REDACTED] in Plainfield, New Jersey from January 2000 to July 2000; an employment letter dated July 2, 2003, from Mr. [REDACTED] Operations Manager of [REDACTED], who stated that the applicant had been employed by his company since March 18, 2003; a letter dated October 9, 2003, from Mr. [REDACTED] who stated that he has known the applicant since November 2000; a letter dated October 16, 2003, from Mr. [REDACTED] who stated that he has known the applicant since September 2000; a letter dated October 9, 2003, from Mr. [REDACTED], who stated that he has known the applicant since September 2000; and a letter dated October 13, 2003, from [REDACTED], who stated that the applicant had lived in his house from November 2000 to January 2001.

The employment letters from Ms. [REDACTED] and Mr. [REDACTED] have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the address where the applicant resided during the period of his employment is not indicated. In addition, the employment letters post date the requisite time period for El Salvador TPS. The statement from the applicant's previous landlord, Mr. [REDACTED] is not supported by contemporaneous evidence such as rental receipts. In addition, the statements provided by Mr. [REDACTED] and Mr. [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 statements; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. It is also noted that these letters are not notarized, nor in affidavit form; thus, provide little, if any, evidentiary weight.

The record also contains a letter dated July 3, 2003, from Reverend [REDACTED] Pastor of the [REDACTED] in Plainfield, New Jersey; the applicant's Internal Revenue Service, Form W-2, Wage and Earnings Statement, reflecting income for the year 2002; four affidavits from acquaintances; two Western Union money transfer receipts dated August 23, 2002 and September 7, 2002; and his pay statements from [REDACTED], dated July 26, 2002 and August 2, 2002. The statements from the affiants regarding the applicant's residence in the United States are not supported by contemporaneous evidence covering the time period for El Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. In addition, the letter from Reverend [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. It is also noted that this letter contains numerous grammatical spelling errors, including the pastor's first name. 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 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 and continuous 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 on these grounds will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. 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.