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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 24 2005
[EAC 01 199 50436]

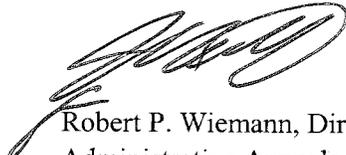
IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:
[REDACTED]

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 that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a brief statement and 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 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 § 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on May 18, 2001. In support of the application, counsel submitted photocopies of the following documentation:

1. The identification page from the applicant's El Salvadoran passport, issued at the El Salvadoran Consulate General in Manhattan, New York, on November 17, 1999;
2. The applicant's El Salvadoran personal identification card, issued in El Salvador on May 19, 1997; and,
3. The applicant's "Virginia Identification Card," issued on December 18, 1999.

On October 5, 2002, the applicant was requested, through counsel, to appear for fingerprinting in connection with his TPS application. Because the applicant failed to respond to the request, the director denied the application due to abandonment on June 24, 2002. The application was subsequently re-opened by the director on a motion filed by counsel on July 22, 2002.

On April 24, 2003, the director requested the applicant, through counsel, to submit evidence establishing his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. In response, counsel submitted photocopies of the following documentation:

4. A receipt issued to the applicant from Gavilan Express. The year of the date, shown as June 18th, on the receipt is not clear;
5. The applicant's earnings statements from Cherry Lane Electrical Service, Inc., Laurel, Maryland, dating from March 2002 through July 2003;
6. The applicant's account statements from Chevy Chase Bank, Ft. Laurel, Maryland, dated April, September, October, and December 2002; and, April 2003;
7. A credit card receipt issued to the applicant from IHOP, Wheaton, Maryland, dated April 12, 2003;
8. The applicant's 2001 Internal Revenue Service (IRS) Form 1040EZ, Income Tax Return for Single and Joint Filers with No Dependents; his 2001 IRS Form W-2, Wage and Tax Statement; and, his 2001 Virginia state Form 760, Individual Income Tax Return; and,
9. The applicant's 2002 IRS Form 1040, U.S. Individual Income Tax Return; his 2002 IRS Form W-2; and, his 2002 Virginia state Form I-760.

The director determined that the documentation submitted was insufficient to establish the applicant's qualifying continuous residence and continuous physical presence during the requisite time periods. The director denied the application on June 24, 2003.

On appeal, counsel states that the evidence previously submitted, as well as the following additional documentation submitted on appeal, establishes that the applicant is qualified for TPS:

10. The applicant's earnings statement from Delano Demolition Services, Inc., dated December 25, 2001, through March 19, 2002;
11. The applicant's earnings statements from Cherry Lane Electrical Service, Inc., dating from April 2002, through March 3, 2003;
12. A letter from Cherry Lane Electrical Services, Inc., dated July 22, 2003, stating that the applicant had been employed since March 19, 2002.

The applicant claims to have entered the United States in June 1998. It is reasonable to expect that he would have a variety of contemporaneous evidence to support his claim of having continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001, through to the date of filing his TPS application on May 18, 2001. However, most of the documentation submitted is dated before (Nos. 1 and 3, above) or after (Nos. 5, 6, 7, 9, 10, 11, and 12) the dates required to establish qualifying continuous residence and continuous physical presence. The only documentation submitted to cover the required time periods is No. 8, the applicant's 2001 tax records. It is noted that the tax records indicate that in 2001, the applicant earned only \$1,284. Therefore, it cannot be assumed that the documentation covers the entirety of the periods required to establish TPS eligibility. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

It is concluded that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, through to the date of filing his Form I-821 on May 18, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.