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U.S. Citizenship
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FILE: [REDACTED]
[LIN 02 286 51920]

Office: NEBRASKA SERVICE CENTER

Date: JUN 29 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:
[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, Nebraska 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 entry into the United States prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, new counsel for the applicant submits a brief and additional evidence.

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.
- (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. Subsequent extensions of the TPS designation has 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 record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on December 17, 2001, under CIS receipt number LIN 02 065 52657. The service center director denied that application on May 29, 2002, because the applicant failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on September 6, 2002, under CIS receipt number LIN 02 286 51920.

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 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 applicant submitted the following evidence with the Form I-821, Application for Temporary Protected Status:

1. a photocopy of the applicant's 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from [REDACTED] St. Louis, Missouri, reflecting an annual income of \$1700;
2. a photocopy of a pay statement dated August 8, 2002, from [REDACTED] in St. Louis, Missouri; and,
3. a letter dated August 27, 2002, from [REDACTED] pastor of the [REDACTED] [REDACTED] stating that the applicant "has attended church" at his church "on occasions," but these occasions were "my only contact with him."

On January 13, 2003, the applicant was requested to submit additional evidence to establish entry into the United States prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. It is noted that this notice was written as a Notice of Intent to Withdraw approval of the applicant's TPS, but the notice makes reference to the current TPS application, CIS receipt number LIN 02 286 51920. Therefore, the notice will be considered as a Notice of Intent to Deny rather than a Notice of Intent to Withdraw. In response to the notice, the applicant submitted the following:

4. a letter dated December 11, 2001, from [REDACTED] stating that the applicant had lived with him at [REDACTED] December 2000;
5. a photocopy of a mailing envelope with an illegible postmark addressed to the applicant at [REDACTED] and,
6. an affidavit dated February 5, 2003, from [REDACTED] stating that the applicant worked for [REDACTED] "from January to May of 2001."

The director determined that the applicant had failed to establish entry into the United States prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, and denied the application on August 11, 2003.

On appeal, new counsel for the applicant contends that the evidence submitted by the applicant to establish his continuous residence and continuous physical presence in the United States should have been given more weight. Counsel submits the following additional evidence:

7. a photocopy of a mailing envelope addressed to the applicant at [REDACTED] that appears to have been postmarked on February 4, 2001;
8. an affidavit dated October 3, 2003, from [REDACTED] stating that she has known the applicant since December of 2000, and that she met the applicant at a dinner hosted by [REDACTED] on December 24, 2000;
9. an affidavit dated October 4, 2003, from [REDACTED] and [REDACTED], stating that she has known the applicant since December 12, 2000;
10. an affidavit dated October 4, 2003, from [REDACTED] stating that the applicant is his nephew, and the applicant lived with him from November 2000 until May of 2003;
11. an affidavit dated September 25, 2003, from [REDACTED] Human Resources Director, [REDACTED] stating that the applicant has worked for her company as a full-time assembler since November 19, 2001;
12. an Illinois marriage certificate indicating that the applicant and [REDACTED] were married in Clayton, Missouri, on July 30, 2003;
13. an affidavit from the applicant dated October 6, 2003, stating that he first entered the United States without inspection near Douglas, Arizona, on November 3, 2000, and that he lived with his uncle, [REDACTED], at [REDACTED] until May 2003. The applicant further states that he worked for [REDACTED] for cash from January 2001 to May 2001, was unemployed from May 2001 to August 2001, and began working for [REDACTED] as a temporary worker from August 2001 to November 2001, at which time he was hired as a full-time permanent employee of Potter Electric Signal; and,
12. a notice from the IRS dated May 19, 2003, informing the applicant that he had an amount due on his income tax.

The letter from [REDACTED] (No. 3 above) 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 dates the applicant attended his church or the address where the applicant resided during the period of his involvement with the church. Similarly, the employment affidavit from [REDACTED] (No. 6 above) 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, the affiant does not identify the applicant's duties or provide the address where

the applicant resided during the period of his employment. Nor is the letter signed and attested by [REDACTED] under penalty of perjury as required at 8 C.F.R. § 244.9(a)(2)(i).

The affidavits of acquaintance from [REDACTED] and [REDACTED] may be given some consideration as "any other relevant document" as described at 8 C.F.R. § 244.9(2)(vi)(L). However, these affidavits are not supported by any contemporaneous evidence other than the mailing envelope postmarked February 4, 2001 (No. 7 above), and the address indicated on this envelope contradicts the address claimed by the applicant and reflected in No. 4 above. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner 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. (Comm. 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). The applicant has provided sufficient evidence to establish continuous residence and continuous physical presence in the United States since November 19, 2001. However, the applicant has not provided sufficient evidence of continuous residence in the United States from February 13, 2001 to November 19, 2001, and continuous physical presence in the United from March 9, 2001 to November 19, 2001.

It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and 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 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.