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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 01 200 50916]

Office: Vermont Service Center

Date: MAR 16 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 he had continuously resided in the United States since February 13, 2001.

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 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 3, 2003, 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. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant had established his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. However, the director determined that the applicant failed to establish he had continuously resided in the United States since February 13, 2001. Therefore, the director denied the application on August 26, 2003.

On appeal, the applicant submits the following documentation in support of his eligibility for TPS: a letter dated September 12, 2003, from [REDACTED] Branch Manager of Bancomercio in Falls Church, Virginia, who stated that the applicant had sent money through her agency since April 10, 2002; a letter from [REDACTED] Administrative Manager for Bancomercio, who stated that the applicant had wired money to El Salvador since April 10, 2001; an undated letter from the applicant's fiancé, [REDACTED] who stated that she had lived with the applicant for a long time and that they had been sharing expenses since 1998; two letters dated September 13, 2003, from [REDACTED] and [REDACTED] who stated that they have known the applicant since 1999 while he was living at [REDACTED].

The letter from [REDACTED] of Bancomercio indicates that the applicant had wired money since April 10, 2001, which post-dates the requisite time period for continuous residence by about two months. The statements provided by the applicant's fiancé, [REDACTED] do not indicate how long the applicant has resided in the United States, nor does [REDACTED] provide the applicant's address, if any, in the United States. In addition, the statements provided by [REDACTED] and [REDACTED] regarding the applicant's claimed continuous residence in the United States are not supported by corroborative evidence for the requisite time periods for El Salvador TPS. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the applicant claimed on his Form I-821, Application for Temporary Protected Status, that he entered the United States on July 18, 1992. It is also reasonable to expect that the applicant would have some other type of contemporaneous evidence in support of his continuous residence in the United States during the request time period for El Salvador TPS. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 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.

While the director stated in his decision that the applicant had established continuous presence in the United States since March 9, 2001, the director erred in his conclusion. A review of the record of proceedings reflects that the closest date to the requisite time period for continuous physical presence in the United States as reflected in the letter from [REDACTED] of Bancoamerico is April 10, 2001. Further, although the copy of the applicant's IRS Form W-2, Wage and Tax Statement contained in the record indicates that the applicant was in the United States during the year 2001, this document does not provide the actual dates of employment. The applicant also provided copies of his earnings statements from [REDACTED] in Fredericksburg, Virginia for the pay period beginning on November 4, 2001. However, the pay period as reflected in the earnings

statements post-date the requisite time period by over eight months. The burden is on the applicant to establish his continuous physical presence in the United States since March 9, 2001. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

It is noted that the applicant had filed a previous TPS application [EAC 01 200 50916] on May 18, 2001; however, that application was denied on July 2, 2002, due to abandonment. The applicant did not file any subsequent appeal or motion to reopen during the requisite time period on this decision.

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.