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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: MAR 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:

[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.

*Cindy N. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

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 continuous residence in the United States since February 13, 2001.

On appeal, counsel 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 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.

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 March 9, 2005, 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).

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 2, 2004.

On appeal, counsel states that the person who helped the applicant complete his application for TPS did not tell him that he had to submit evidence of his continuous residence and physical presence in the United States. Counsel explains that the applicant, who was only 20 years old when he applied for TPS, does not read or write English. Counsel states that the applicant trusted his former representative to ensure that his application and supporting documents were complete. Counsel further states that the applicant never received any correspondence from Citizenship and Immigration Services (CIS) requesting additional evidence to establish his qualifying continuous residence and physical presence in the United States. Counsel submits the following evidence:

1. the applicant's pay statements from [REDACTED] of Camarillo California, from the following pay periods: August 26, 2000 to September 1, 2000; October 14, 2000 to October 20, 2000; and, October 21, 2000 to October 27, 2000;
2. Western Union money transfer receipts dated: December 2, 2000; December 16, 2000; January 14, 2001; January 20, 2001; February 10, 2001; September 8, 2001; October 27, 2001; July 13, 2002; October 20, 2002; January 12, 2003; October 18, 2003; and, February 29, 2004;
3. a cash receipt dated March 22, 2001, indicating that [name illegible] Professional Services of North Hills, California, received \$100 from [REDACTED] for "TPS Program";
4. a letter dated July 5, 2001, from the Social Security Administration in Van Nuys, California, acknowledging receipt of the applicant's application for a social security card<sup>1</sup>;
5. a mailing envelope postmarked December 5, 2001, from [REDACTED] Salvador, addressed to the applicant at [REDACTED];
6. the applicant's Sprint telephone bill dated February 12, 2002;
7. a letter dated June 7, 2002, from the Selective Service System informing the applicant that he must register with the Selective Service System;
8. a checking account statement from Washington Mutual Bank for the statement periods from August 17, 2002 to September 18, 2002, and from December 18, 2002 to January 17, 2003;
9. a jury summons from the Superior Court, State of California, in Martinez, California, calling the applicant to report for jury duty on March 10, 2003;

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<sup>1</sup> It is noted that, although the applicant worked in 2000 under Social Security # [REDACTED] he did not apply for a Social Security card until July 5, 2001. Therefore, it appears that he obtained employment with New Mid-Coast Builders using a fraudulent Social Security Card.

10. an automobile registration from the Department of Motor Vehicles, State of California, valid from April 16, 2004 to April 16, 2005;
11. an affidavit dated April 14, 2004 from [REDACTED] who identifies himself as the applicant's father, indicating that the applicant first came to the United States in April 2000 and has never left the United States since that date; and,
12. three affidavits of witness affirming the applicant's residence in the United States since April 2000.

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 sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

Nevertheless, the application may not be approved at this time. The applicant has not provided sufficient evidence of identity and nationality. Although the applicant has provided a photocopy of his Salvadoran birth certificate with English translation, he has not provided proof of identity. Pursuant to 8 C.F.R. § 224.9(a)(1)(ii), acceptable evidence of nationality may consist of a passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint.

It is also noted that the applicant received a jury summons from the Superior Court of the State of California ordering him to report for jury duty on March 10, 2003. Only United States citizens are eligible to serve on jury duty in the State of California. Therefore, it appears that the applicant may have previously advanced a fraudulent claim to vote or to be a United States citizen.

Accordingly, the matter is remanded for consideration and action consistent with the foregoing.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The matter is remanded for further action consistent with the above and entry of a new decision.