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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 01 208 52077]

Office: VERMONT SERVICE CENTER

Date: MAY 05 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 because the applicant failed to establish his nationality, and that he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant provides 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 designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 first issue raised by the director to be addressed in this proceeding is whether the applicant has established his nationality.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

The applicant claims on the application that he is a citizen of El Salvador. In a notice of intent to deny, dated April 25, 2003, the Service requested that the applicant submit evidence to establish that he is a citizen or national of El Salvador. The applicant was advised that such evidence may include; a copy of the "biographical pages of your passport (those pages with your name, birth date, photograph, etc.); a copy of your birth certificate issued by the appropriate civil authority showing timely registration, date and place of birth, and parents' names; or, a copy of both sides of your National Identification Card." The applicant failed to respond to the notice of intent to deny.

As the applicant failed to respond to the Service's notice of intent to deny, the director denied the application on July 9, 2003.

On appeal, the applicant merely resubmitted a photocopy of his Virginia driver's license and a photocopy of his Maryland driver's license. The applicant states that he did not receive the denial notice dated July 9, 2003, because at that time, he was residing at [REDACTED] Apartment B-2, and that he thinks the letter was sent to [REDACTED] Apartment 13. It is noted that both the notice of intent to deny and the denial notice dated July 9, 2003, were mailed to [REDACTED].

The applicant has provided no additional documentary evidence such as a passport, a birth certificate accompanied by photo identification or any national identity document from his country of origin containing his photograph and fingerprint. The applicant has not established his nationality; therefore, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

The remaining issue raised by the director to be addressed in this proceeding is whether the applicant has continuously resided in the United States since February 13, 2001.

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.

In support of his application, the applicant provided a copy of a Notice of Refund from the Maryland Automobile Insurance Fund, dated December 15, 1999.

On appeal, the applicant submits: a copy of a Motor Vehicle Administration Registration Cancellation, dated June 2, 2001; a copy of a Notice of Refund from the Maryland Automobile Insurance Fund, dated May 29, 2001; a receipt from "gignate express" dated August 20, 2001; an earnings statement from Ruby Tuesday, Inc., for October 17, 2001 through October 23, 2001; automobile insurance policies for periods covering December 1, 2000 to December 1, 2001, March 5, 2002 to March 5, 2003, and March 5, 2003 to March 5, 2004; a letter from the Maryland Motor Vehicle Administration describing incidents and the number of points against the applicant's license over a 36 month period. The dates of these incidents are shown as September 21, 2000, March 3, 2001, January 7, 2003, and May 6, 2003; and, two printouts [REDACTED] that contain information regarding car insurance policies for the applicant from December 1, 1999 to December 1, 2000, December 1, 2000 to June 3, 2001, August 17, 2001 to September 8, 2001, March 5, 2002 to March 5, 2003, and March 5, 2003 to March 5, 2004.

The record contains insufficient documentary evidence to demonstrate that the applicant has been continuously residing in the United States since February 13, 2001. The provided insurance information merely suggests that the applicant maintained car insurance throughout the stated dates, but is not evidence of the applicant's day-to-day living in the United States since the requisite timeframe. In addition, one pay record for a six-day period and one receipt from Gigante Express is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

Beyond the decision of the director, the applicant has not provided sufficient evidence to show that he has been continuously physically present in the United States from March 9, 2001, to the filing date of his TPS application. As stated above, the documentation provided is not sufficient in demonstrating the applicant's day-to-day presence in the United States during the requisite timeframe. Therefore, the application must also be denied for this reason.

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.