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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 02 187 50456]

Office: VERMONT SERVICE CENTER

Date: MAY 11 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 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: (1) continuously resided in the United States since February 13, 2001; and (2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that he left the United States on February 15, 2002, due to his father being very ill in El Salvador. The applicant also asserts that he requested a passport while in El Salvador because, he concluded, the process didn't take as much time as it would in the United States. The applicant further asserted that the discrepancy in his United States address was due to his moving in 2001.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. An extension of the TPS designation has been granted 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 July 29, 2002, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. A copy of a technical service order from Logic Computer Solutions, LLC, made out to the applicant and dated May 9, 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 16, 2003.

On appeal, the applicant reasserts his claim and submits the following documentation:

2. An original copy of the Logic Computer Solutions, LLC service order; and

3. A letter from [REDACTED] dated November 7, 2003, in which he states that the applicant was employed as a laborer by Hardaway Construction Corporation of Tennessee from December of 2000 to October of 2001.

The applicant has not submitted sufficient evidence to establish his continuous qualifying residence or continuous physical presence in the United States during the period from February 13, 2001, to May 9, 2002. The applicant submitted with his initial application a copy of a sworn statement, dated May 2, 2002, in which [REDACTED] Medina states: "[the applicant] had been living at [REDACTED] since May 10, 1999, he pays me rent of \$200.00 per month." This sworn statement directly conflicts with the applicant's statement that he moved in 2001 to a new address. There were no rent receipts, copies of cancelled checks, or money order receipts to substantiate the applicant's continuous physical presence and continuous residency claim.

The applicant submitted with the initial application for TPS a copy of his passport, which was issued on March 8, 2002 in El Salvador. Although the applicant claims that he left the United States to return to El Salvador due to his father's illness, he has failed to submit evidence to establish that he had permission to leave the United States (I-512 Advance Parole status) or the date in which he returned to the United States. The applicant submitted with the initial application a translated version of his identification card, dated November 8, 2001, in which he was asked to list his father's name and surname, to which he answered "none." Further, the applicant has failed to submit evidence to show that an exit visa or a passport was issued and stamped upon his exit from the United States on February 15, 2002. The applicant submitted three Applications for Employment Authorization, dated May 3, 2002, August 26, 2002, and August 6, 2003. On question number 12 of the applications he lists May 10, 1999, as his last date of entry into the United States.

The evidence submitted fails to document the applicant's continuous physical presence and continuous residency in the United States during the initial registration period. He has, thereby, 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 TPS will be affirmed.

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.