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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 01 203 51744]

Office: Vermont Service Center

Date: **MAY 24 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.


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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel, on behalf of the applicant, asserts his 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 16, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant was also requested to submit photos as well. 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 failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001, to the date of filing his application. Therefore, the director denied the application on August 8, 2003.

On appeal, counsel submits copies of 2001 and 2002 Internal Revenue Service, Form 1040, U.S. Individual Income Tax Forms, for [REDACTED]. Counsel also states that the applicant lived with Ms. Loarca during 2001 and 2002, and that this evidence establishes the applicant's residence in the United States. In addition, counsel also argues that the applicant's date of entry into the United States is based on the applicant's apprehension by the Service which would be indicated by the applicant's fingerprint results.

The tax documents submitted by counsel on appeal may indicate, although quite remotely, if at all, that the applicant resided in the United States during the year 2001 and 2002. However, these documents do not provide the actual dates of the applicant's claimed continuous residence or physical presence in the United States. Besides, it cannot be concluded that claiming someone as a dependent on income tax forms establishes residence or physical presence in the United States. In addition, a review of the record of proceedings reflects that the applicant submitted in response to the director's April 16, 2003 request an affidavit dated April 21, 2003, from [REDACTED] who stated that she had known the applicant since August 2000; and an affidavit dated April 21, 2003, from [REDACTED] who stated that she had known the applicant since May 2000. However, these statements do not indicate whether their acquaintance with the applicant was in the United States. In addition, affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. The record also contains a copy of the applicant's Interim Permit issued by the New York State Department of Motor Vehicles on December 18, 2001, and a copy of a single receipt from Gigante Express dated November 22, 2001. However, the information on the Interim Permit and the receipt postdate the qualifying time periods for continuous residence and continuous physical presence for El Salvadoran TPS. The applicant claims to have lived in the United States since May 2000. It is reasonable to expect that the applicant would have some other type of documentary evidence to support his continuous residence and continuous physical presence since his claimed entry into the United States.

It is also noted that the record reflects that the applicant was apprehended by the United States Border Patrol on July 13, 1999, near Eagle Pass, Texas. However, the applicant claimed on his TPS application that he did not enter the United States until May 2000, almost one year later. Doubt cast on any aspect of the applicant's statements may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his claimed entry date into the United States. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. 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 not submitted sufficient credible evidence to

establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant has, therefore, 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 on these grounds will be affirmed.

It is noted that the applicant was ordered removed in absentia on June 26, 2000, at San Antonio, Texas, based upon his apprehension near Eagle Pass, Texas, on July 13, 1999.

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.