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U.S. Citizenship
and Immigration
Services

MI

FILE: [REDACTED]
[EAC 02 028 53360]

Office: VERMONT SERVICE CENTER

Date: **NOV 02 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 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 sustained.

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 on September 3, 2003; however, the director's decision does not clearly indicate the specific basis for the decision.

On appeal, the applicant provides evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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. Subsequent extensions of the TPS designation have been granted with the latest extension valid 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).

The record shows that the applicant filed his TPS application on September 24, 2001. On July 3, 2003, the applicant was provided the opportunity to submit evidence establishing his continuous residence since February 13, 2001. The applicant failed to respond to the notice. The director denied the application on September 3, 2003; however, the director's decision does not clearly indicate the specific basis for the decision.

On appeal, the applicant submits the following:

1. A copy of 2001 Maryland and Federal tax documents.
2. A letter from the Maryland Automobile Insurance Fund dated March 9, 2001.
3. A copy of a Bank of America bank statement for the period from August 9, 2001 to September 5, 2001.
4. A copy of a letter from the Comptroller of Maryland dated February 6, 2003.
5. A copy of a Maryland Insurance Certification dated April 5, 2002, indicating insurance coverage from December 21, 2000 to February 25, 2001.
6. A copy of a State of Maryland Provisional License issued on April 20, 2002.

The record also contains a copy of the applicant's passport issued in Washington, D.C., on December 10, 1999, as well as a copy of a State of Maryland Provisional License issued on November 4, 2000.

The tax information indicates the applicant was present in the United States during 2001. The Insurance Fund letter, the Insurance Certification, the passport, and one of the provisional licenses establish that the applicant was present in the United States prior to February 13, 2001. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2 (c). Therefore, the director's decision will be withdrawn and the application will be approved.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained