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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

MM

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 07 2005

[EAC 02 231 53508]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement 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.

- (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.

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. Subsequent extensions of the TPS designation has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed his Form I-821, Application for Temporary Protected Status, on June 28, 2002.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant stated on his Form I-821 that he entered the United States without inspection near San Diego, California, on August 25, 1998. In support of his application the applicant submitted:

1. a photocopy of a money transfer receipt dated March 5, 2001.

On February 20, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The notice was mailed to the applicant at his current address, [REDACTED] but was returned to CIS as undeliverable mail. A second Notice of Intent to Deny was subsequently mailed to the applicant at his updated address, [REDACTED] on February 11, 2004. This notice was not returned to CIS as undeliverable mail. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on July 19, 2004.

On appeal, the applicant states that he never received the Notice of Intent to Deny dated February 11, 2004. He submits the following evidence:

2. an affidavit dated August 7, 2004, from [REDACTED] stating that the applicant is his brother-in-law and that the applicant has been continuously physically present in the United States since August 25, 1998;
3. an affidavit dated August 7, 2004, from Flor [REDACTED] s stating that the applicant is her brother-in-law and that he has been continuously physically present in the United States since August 25, 1998;
4. an affidavit dated August 5, 2004, from [REDACTED] stating that the applicant is her brother-in-law and that he has been continuously physically present in the United States since August 25, 1998;
5. a letter dated August 9, 2004, from [REDACTED], Pastor of [REDACTED] Church in Flushing, New York, stating that the applicant is a member of his parish and has lived in the community since "2000/2001;"

6. photocopies of receipts from Sapromak Electronics Corp., Corona, New York, dated December 24, 1998, and May 3, 1999, respectively;
7. a photocopy of shipping receipt from Medrano Express in Hempstead, New York, indicating the applicant shipped a package to El Salvador on January 19, 2000; and,
8. photocopies of money transfer receipts dated: March 21, 2001; May 30, 2001; June 13, 2001; July 5, 2001; and, July 11, 2001.

The receipts from Sapromak Electronics Corp. (No. 6 above) and the Medrano Express shipping receipt (No. 7 above) do not establish the applicant's qualifying continuous residence and continuous physical presence because they predate the requisite periods. The affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the exact dates of the applicant's membership in his church.

The affidavits from Mr [REDACTED] (No. 2 above), Ms [REDACTED] (No. 3 above), and Ms [REDACTED] (No. 4 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. Affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has not submitted sufficient evidence to establish residence in the United States from February 13, 2001 to March 5, 2001, nor has he submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States from July 11, 2001 to June 28, 2002, the filing date of his Form I-821. He has, therefore, failed to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

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 not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.