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U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 02 242 51408]

Office: VERMONT SERVICE CENTER

Date: **OCT 03 2005**

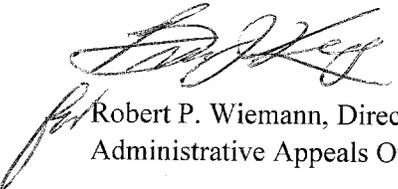
IN RE: Applicant: [REDACTED]

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 he was present in the United States before February 13, 2001.

It is noted that the applicant appears to be represented by [REDACTED] who identified himself as an attorney, and who also signed a change of address letter that was forwarded by the applicant for the record. However, the record does not contain a Form G-28, Notice of Entry of Appearance of Attorney or Representative, authorizing [REDACTED] represent him before Citizenship and Immigration Services (CIS) in this proceeding. Therefore, the decision will be provided only to the applicant.

On appeal, the applicant states he is appealing because he does have evidence to establish that he was present in the United States before February 13, 2001. The applicant submits additional documentation for consideration.

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).

Upon initial submission, the applicant submitted:

1. An affidavit dated November 1, 2004 from [REDACTED] who states that the applicant lived with him at the same address in Warminster, Pennsylvania since February 2001.

On August 13, 2003, 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. He was also requested to submit evidence to show that he is a citizen or national of El Salvador. In response, the applicant submitted the following documentation:

2. A copy of his El Salvadorian military identification card dated August 18, 1990.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 8, 2004.

On appeal, the applicant reasserts his claim and submits:

3. An affidavit dated November 1, 2004 from [REDACTED] who states that she has know the applicant since he came on February 10, 2001 and that he "used to live with us" in Warmister, Pennsylvania from February 10, 2001 to December 31, 2002.
4. A letter dated March 26, 2004 from [REDACTED] [REDACTED] 2:20 Church in West Babylon, New York. They state that the applicant has been a member of the church since January 1, 2003..

It is noted that affidavits from acquaintances or family members such as the affidavits provided by [REDACTED] [REDACTED] at Item #1 and by [REDACTED] [REDACTED] Item #3 are not, by themselves, persuasive evidence of residence or physical presence.

The applicant has not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States from prior to February 13, 2001 to January 1, 2003 when he began attending the Inglesia Evangelica Apostoles y Profetas Efe. 2:20 Church. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's decision to deny the application for TPS 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 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.