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**U.S. Citizenship
and Immigration
Services**

M

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **OCT 04 2005**

[EAC 01 244 56817]

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 stated to be a native and citizen of El Salvador who is applying for 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 been continuously physically present in the United States since March 9, 2001.

On appeal, counsel provides a brief statement and additional documentation.

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 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.
- (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 issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous physical presence in the United States during the required timeframe.

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. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service now Citizenship and Immigration Services (CIS), on August 6, 2001.

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 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).

In a notice of intent to deny, dated May 19, 2003, the applicant was requested to submit evidence to establish his continuous physical presence in the United States from March 9, 2001, to the date of the filing of his TPS application. The applicant was also requested to submit evidence to establish his continuous residence in the United States from February 13, 2001, to the date of the filing of his TPS application.

The director found that the evidence submitted, in response to the notice of intent to deny, "satisfies that you have resided in the United States as of February 13, 2001. However, the evidence did not relate to the time period for showing that you have been physically present from March 9, 2001, to the date of filing." The director denied the application on August 27, 2003.

On appeal, counsel states that for the initial TPS registration the applicant provided three affidavits, two from co-workers and one from his landlord who stated that the applicant has resided in her home since August 2000. Counsel also states that when additional evidence was requested, the applicant submitted rent receipts from "9/1/00, 1/1/01, pay stubs from 4/24/02, 5/8/02, 6/19/02, 7/31/02, 8/14/02, 8/28/02, and a phone bill from 12/1402-1/3/03. He also submitted checks dated 5/30/03, 6/6/03, and 6/13/03."

Counsel submits: a letter dated September 13, 2003, from [REDACTED] who states that, as her tenant and friend, she has known the applicant in the United States since August 2000 to the present; a letter dated September 16, 2003, from [REDACTED] who states that the applicant has been his friend since childhood, and that the applicant "entered and has been in the U.S. without leaving since 08/2000 to date;" an undated letter from [REDACTED] who states that he has known the applicant "for about three years;" and, copies of three rent receipts dated "10/012000, 03/01/02, and 8/01/03. It is noted that the date on the rent receipt for March 1, 2001, appears to have been changed. 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, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Id.*, 582, 591.

The documentary evidence submitted on appeal is not sufficient in establishing the applicant's continuous physical presence in the United States since March 9, 2001, until the filing date of his TPS application on August 6, 2001. The letters, without supporting documentary evidence to cover the time periods from March 9, 2001 to August 6, 2001, are not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The rent receipts provided in support of the letter from [REDACTED] do not cover the timeframe from March 9, 2001 to August 6, 2001, and the letter from [REDACTED] merely states that he has known the applicant for three years, but provides no date.

The applicant has failed to provide sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

Beyond the decision of the director, the director erred in stating that the applicant has provided evidence of his continuous residence in the United States. For the same reasons stated above, the applicant has not provided sufficient evidence to establish that he has been continuously residing in the United States since February 13, 2001, to the date of filing of his TPS application. The record contains insufficient documentary evidence to establish the applicant's day-to-day living in the United States from February 13, 2001 to April 6, 2001. In addition, the applicant has failed to provide any identification. Therefore, the application must also be denied for these reasons.

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.