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U.S. Citizenship  
and Immigration  
Services

MI

FILE:

[REDACTED]  
[EAC 02 275 52680]

Office: VERMONT SERVICE CENTER

Date: OCT 06 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.

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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 time periods.

On appeal, counsel for the applicant submits 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 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.

- (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.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 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 burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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).

In support of his initial TPS application, filed on August 30, 2002, the applicant submitted:

1. A photocopy of an abstract of his El Salvadoran birth certificate, with English translation;
2. A "landlord's letter," dated July 15, 2002, from [REDACTED] stating that the applicant had resided at [REDACTED] since May 2000; and,
3. A letter, dated June 28, 2002, from [REDACTED] stating that the applicant had lived in the United States since May 2000.

On May 14, 2003, and again on January 16, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the requests.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on March 30, 2004.

On appeal, counsel for the applicant asserts that the director's denial of the applicant's Form I-821 is arbitrary, capricious and an abuse of discretion. In support of the appeal, counsel submits the following:

4. A photocopy of an affidavit, dated April 10, 2004, from [REDACTED] stating that she had known the applicant since May 15, 2000;
5. A photocopy of an affidavit, dated April 16, 2004, from [REDACTED] stating that he had known the applicant since May 2000;
6. A photocopy of a letter from [REDACTED] stating that the applicant had been a client since May 30, 2000;
7. Photocopies of receipts from Gigante Express, dated October 25, 2001, and December 28, 2001; and,
8. Photocopies of documentation dated on or after June 2003.

The applicant claims to have lived continuously in the United States since an unspecified date in May 2000. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Letters from acquaintances (No. 3, 4, 5, and 6, above) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. Furthermore, the documentation contained in No. 8 is dated beyond the dates required to establish continuous residence and continuous physical presence. Other than the receipts contained in No. 7, the applicant has not submitted any documentation to support his claim to residence and physical presence in the United States from the dates required to the date of filing his TPS application.

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous 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.