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U.S. Citizenship  
and Immigration  
Services

MM

FILE: [REDACTED]  
[EAC 01 178 55185]

Office: VERMONT SERVICE CENTER

Date: **SEP 23 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. An appeal was treated as a Motion to Reopen by the director and she again denied the application. The applicant appealed the director's decision on the motion, 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 after determining that the applicant had abandoned his application by failing to appear for fingerprinting.

On motion, the applicant states that he never received the notice to appear for fingerprinting.

The director subsequently determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that he and [REDACTED] are one and the same. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States 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 Salvador 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite 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 April 12, 2001. On June 11, 2001, the applicant was requested to appear to be fingerprinted. The applicant failed to appear and the director denied the application as abandoned. A subsequent appeal was treated as a motion to reopen. On February 2, 2004, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

1. Copies of receipts from Osaka Paging Service, Union City, New Jersey dated January 1, 2001 and March 25, 2001.
2. A copy of a letter from the Social Security Administration dated June 29, 2001.

3. A copy of hand-written generic rent receipt dated February 2, 1998 and a receipt with an unreadable date.
4. A copy of a 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement in the applicant's name and 1999 and 2000 Form W-2s in the name of [REDACTED]
5. A copy of a pay stub from [REDACTED] Corp. dated August 9, 2001.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that he and [REDACTED] are one and the same person. The applicant also submits a statement from [REDACTED] Manager, United Embroidery, Inc. North Bergen, New Jersey. Mr. [REDACTED] states that the applicant had been employed by his company under the name of [REDACTED] that he was fired when it was determined that the applicant was using an illegal name, and, that he was rehired again under his proper name.

The receipts from [REDACTED] paging service indicate the applicant was present on those specific dates. Similarly, the hand-written receipt indicates the applicant was present in this country prior to February 13, 2001, and, the 2001 Form W-2 in the applicant's name indicates he was present in the United States in 2001. However, these documents cannot establish the applicant's continuous residence from February 13, 2001 and continuous physical presence from March 9, 2001 to the date of the filing of the TPS application. The letter from the Social Security Administration and the pay stub are both dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence. The 1999 and 2000 Form W-2s indicate [REDACTED] was present in the United States during those years, but the applicant has not established that he and [REDACTED] are one and the same. In the same way, the letter from [REDACTED] does not establish that the applicant and [REDACTED] are the same person. Therefore, these documents are of no probative value.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.