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U.S. Citizenship  
and Immigration  
Services

MI



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **SEP 30 2005**  
[WAC 01 187 54521]

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 cursive script, appearing to read "Robert P. Wiemann".

*for* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application and a subsequent motion were denied by the Director, Vermont Service Center. The matter 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 had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits additional documentation in support of his application.

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 the following documentation.

1. Copies of his earnings statements from [REDACTED] in Brea, California for the period from August 28, 2000 through September 10, 2000, September 11, 2000 through September 24, 2000 and November 6, 2000 through November 19, 2000.

On June 17, 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. The applicant did not respond to that request.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 16, 2003. On December 15, 2003, the applicant filed a late appeal that was considered as a motion to reopen by the director. He submitted the following documents with his late appeal.

2. An affidavit dated October 31, 2003 from [REDACTED] who states she was personally in the United States with the applicant, her nephew, since October 2000.
3. The applicant's IRS Form W-2, Wage and Tax Statement, for 2001 from [REDACTED] in Brea, California.

The director denied the applicant's motion to reopen on March 4, 2004. On appeal to the AAO, the applicant forwarded the additional documentation.

4. A copy of an earning statement from [REDACTED] in Brea, California for the period from August 27, 2001 through September 9, 2001.
5. Copies of earning statement from [REDACTED] in Baltimore, Maryland for the periods from October 14, 2001 through October 20, 2001 and November 4, 2001 through November 10, 2001.

The record reflects that on his Form I-821, Application for Temporary Protected Status, and on his Form I-765, Application for Employment Authorization, signed on April 14, 2001, the applicant stated that he entered the United States on October 4, 2000. It is noted that on subsequent Forms I-821 and I-765 signed on September 20, 2002 the applicant stated that he entered this country on August 4, 2000. 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 (BIA 1988).

It is noted that affidavits from acquaintances or family members are not, by themselves, persuasive evidence of residence or physical presence. Other than an affidavit from a family member, the applicant has not submitted evidence to establish his continuous residence or continuous physical presence in the United States during the period from November 19, 2000, to April 23, 2001. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.