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**U.S. Citizenship
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FILE:

[REDACTED]
[EAC 03 022 50081]

Office: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

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 black ink, appearing to read "R. Wiemann".

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 that 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.

On appeal, the applicant asserts his claim of eligibility for TPS.

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).

The applicant initially submitted the following documentation along with his TPS application:

1. A copy of the applicant's El Salvadoran passport issued to him in Washington, DC on August 15, 2002; and,
2. A letter from [REDACTED] in which he stated that he has known the applicant since February of 2000.

On July 22, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. Receipts from Zelaya Inc. International Courier dated December 10, 2000, and January 20, 2001, and bearing the applicant's name as sender;
4. An affidavit from [REDACTED] which he stated that he employed the applicant as a helper at Carpet One located in Alexandria, Virginia, from January of 2000 to August of 2002; and,
5. An affidavit from [REDACTED] in which she stated that the applicant rented a room in her home at [REDACTED] from May of 2000 to June of 2001.

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

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

6. A copy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return for 2000;
7. A copy of a pay statement from Han Ah Reum Corp. for the pay period of February 2, 2001 through February 8, 2001, and bearing the applicant's name as employee; and,
8. A copy of a Provident Bank statement from Morris Painting Contractors dated September 24, 2000, and October 8, 2000, and bearing the applicant's name.

The applicant has not submitted any evidence to establish his qualifying continuous residence, and continuous physical presence in the United States during the period from February 13, 2001, to September 12, 2002. The Zelaya Inc. International Courier receipts, IRS Form 1040 for 2000, Han Ah Reum Corp. pay statement, and Provident Bank statement (Nos. 3, 6, 7, and 8 above) is all dated prior to the requisite time period. The letter written by [REDACTED] (No. 2 above) is non-specific and fails to indicate the applicant's residence during the course of their acquaintance. There has been no corroborative evidence submitted to substantiate the affidavit from [REDACTED] the applicant's residence.

The employment affidavit from [REDACTED] little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that there has been no substantive evidence submitted to support the contentions made in the affidavit. In the absence of supporting evidence, the affidavit alone is insufficient to establish the applicant's continuous residence and continuous physical presence in the United States as required by the regulations.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence 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.

Beyond the decision of the director, the applicant has failed to establish his eligibility for late registration. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with Citizenship and Immigration Services (CIS) on September 12, 2002. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2). The applicant has failed to provide such evidence. Consequently, the applicant's TPS application will also be denied for this reason.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.