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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUL 31 2006
[EAC 01 156 54772]

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.

for Robert P. Wiemann, Chief
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 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 originally denied the application on September 4, 2003, because the applicant failed to respond to a request to submit evidence he thought would overcome the grounds of denial. On September 29, 2003, the applicant appealed the director's decision to the AAO, and stated that he did not understand why his application was denied, as he had not received any letter or notice requesting for evidence. Because the director failed to explain the specific reasons for the denial, pursuant to 8 C.F.R. § 103.3(a)(1)(i), on March 8, 2005, the AAO remanded the case to the director for issuance of a new decision that sets forth the specific reasons for denial of the application. On April 12, 2005, the director issued a new denial decision. The director noted that on July 16, 2003, a notice of intent to deny was issued requesting that the applicant submit additional evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. He maintained that while the applicant failed to respond to the July 16, 2003 notice, the applicant did submit additional evidence on appeal; however, the evidence furnished was insufficient to establish continuous residence and continuous physical presence during the requisite period. Therefore, the director again denied the application on April 12, 2005.

On appeal, the applicant submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 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 term *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.

Persons applying for TPS offered to El Salvadorans 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 valid 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 record shows that the applicant filed his TPS application on March 22, 2001. He indicated on the application and subsequent filings of Form I-821 (Application for Temporary Protected Status) and Form I-765 (Application for Employment Authorization) that he entered the United States in May 2000. In support of his application, the applicant submitted a copy of a State of Virginia Identification Card issued on October 9, 1999. Because evidence furnished was insufficient to establish eligibility, the applicant was requested on July 16, 2003, to submit evidence to establish continuous residence and continuous physical presence in the United States during the requisite period. The applicant failed to respond; therefore, the director denied the application on September 4, 2003. On appeal, filed on September 29, 2003, the applicant submits:

1. A statement dated September 24, 2003, from [REDACTED] indicating that her brother (the applicant) has rented a room at her apartment at [REDACTED] Silver Spring, MD 20903, since January 2001 until the present.

2. A copy of Form W-2 Wage and Tax Statement for the year 2001, from Frederick, Maryland.

The director reviewed the evidence furnished (Nos. 1 and 2 above) and maintained that affidavits from family and friends, without documentary evidence, are of little evidentiary value, and that the Form W-2 did not establish the applicant's date of hire in the year 2001. The director, therefore, denied the application on April 12, 2005.

On appeal, filed on April 25, 2005, the applicant asserts that he has no more proofs to send and requests that the evidence previously furnished be accepted. He submits a copy of Form W-2 previously furnished (No. 2 above). He also submits

3. A letter of employment from [REDACTED] indicating that the applicant "works at various job sites as needed as a member of the Washdown Crew," that he starts work at 7 a.m. and stops work at 3:30 p.m., and that he has been with the company since February 12, 2001.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

It is noted that the statement from Ms. [REDACTED] (No. 1 above) indicating that the applicant has been residing at her address at [REDACTED] in Silver Spring, Maryland, since January 2001, is inconsistent with the applicant's address listed on the Form W-2 (No. 2 above) indicating his address as [REDACTED] Hyattsville, MD 20783.

The employment letter (No. 3 above) has little evidentiary weight or probative value as it did not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter did not provide the address or addresses where the applicant resided during the period of his employment, the exact period(s) of employment, and the periods(s) of layoff, if any. Moreover, the letter was not supported by any other corroborative evidence, such as pay statements. The applicant claimed to have lived in the United States since May 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.