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**U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 22 2006
[EAC 02 014 51045]

IN RE: Applicant: [REDACTED]

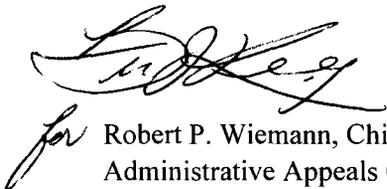
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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. An untimely appeal was treated as a Motion to Reopen and the application was denied again by the Director, Vermont Service Center. The applicant appealed the director's decision on the motion, and it 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 initially 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 motion, counsel for the applicant stated that the applicant established residence in the United States as of February 13, 2001. The applicant also submitted additional evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period.

The director determined that the applicant failed to overcome the basis for the denial and denied the application again.

On appeal, the applicant asserts that he entered the United States in June 1994. The applicant also submits additional 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 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 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 September 21, 2001. On October 30, 2002, 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 was also requested to submit a local police clearance certificate for each jurisdiction in which he resided for six months or more within the previous three years. The applicant, in response, provided the requested clearance and statements from [REDACTED] and [REDACTED].

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 motion, counsel for the applicant stated that the applicant complied with the requirements to get benefits for TPS. The applicant also submitted a copy of the requested police clearance. The applicant also submitted a copy of a Gigante Express receipt dated August 25, 1996, a United States Postal Service (USPS) receipt dated September 12, 1996, a copy of a Verizon telephone bill dated March 7, 2002, a Neighborhood bill dated October 21, 2002 and a copy of a letter from [REDACTED]

The director determined that the applicant did not overcome the basis for the denial and denied the application again.

On appeal, the applicant states that he complied with the request for additional evidence. The applicant also submits another letter from [REDACTED] and generic hand-written receipts dated February 1, 2001, March 1, 2001 and April 1, 2001. The police clearance satisfies the director's request for evidence regarding his criminal record. The Gigante Express and the USPS receipts indicate the applicant was present in the United States on those dates. However, these documents cannot establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. The Verizon bill is dated subsequent to the date required to establish continuous residence and cannot, alone, establish the applicant's continuous physical presence during the qualifying period. The Neighborhood bill is also dated subsequent to the requisite dates to establish continuous residence and continuous physical presence during the qualifying period. Therefore, this documents is of little or no probative value.

[REDACTED] stated that he employed the applicant since June 1, 1994 and that the applicant lived at his home from January 1, 2000 to January 1, 2001. However, this statement has 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 entire period of his employment. It is further noted that the letter does not indicate the company's address. 8 C.F.R. § 244.9(a)(2)(i) provides that letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. This letter does not meet these requirements. The rent receipts are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

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.