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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm., 3000
Washington, DC 20529

U.S. Citizenship
and Immigration
Services

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[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: NOV 0 2 2010
incorporated therein]
[EAC 02 290 51873]

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 on appeal. The appeal will be dismissed.

The applicant is stated to be 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 his continuous residence and his continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and additional documentation.

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 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.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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. 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, 2007, 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 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 filed his initial TPS application on August 2, 2001. The application was denied for abandonment on June 28, 2002, because the applicant failed to appear for fingerprinting. The applicant was given until July 31, 2002, to file a motion to reopen. The applicant did not file a motion.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 9, 2002.

In a notice of intent to deny dated January 31, 2003, the applicant was requested to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical

presence in the United States since March 9 2001. The applicant failed to respond to the notice of intent to deny.

The director denied the application for abandonment on April 28, 2003, because the applicant failed to overcome the grounds for denial mentioned in the notice of intent to deny. The applicant was given until May 31, 2003, to file a motion to reopen.

The applicant filed a motion on May 30, 2003.

The director granted the motion to reopen, and in a decision dated April 2, 2004, determined that the applicant's motion did not overcome the grounds for denial. The director affirmed the previous decision to deny the applicant's TPS application. The applicant was given 30 days to file an appeal (33 days if the notice was received by mail).

The applicant filed an appeal on April 26, 2004.

On appeal, the applicant states that he entered the United States before February 13, 2001, and has established residence in the State of Maryland since or before March 9, 2001. The applicant submits: a letter dated April 18, 2004, from of The Catholic Community of Saint Michael and Saint Patrick in Baltimore, Maryland who states that the applicant became a "participating member of St. Michael and St. Patrick Roman Catholic Community in January of 2001;" a letter dated April 6, 2004, from the owner of Towson Diner who states that he has known the applicant since October 2000, as he started working for the restaurant part-time. The letter also states that the applicant has been a full-time employee during the last three years; a copy of a Maryland Identification Card issued on October 26, 2001; and, copies of unsigned Form 1040, U.S. Individual Income Tax Returns, for the years 2001, 2002 and 2003.

The applicant has provided insufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The letter from Towson Diner is not accompanied by earnings statements or employee records to support its claim that the beneficiary is an employee there. In addition, the Internal Revenue Service has not certified the tax forms for the years 2001, 2002 and 2003. The documentation presented is not sufficient in meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant has not established 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 temporary protected status for these reasons 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.