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U.S. Citizenship
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Services

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[REDACTED]

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 17 2006

[EAC 01 231 58382]

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:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director of the Vermont Service Center. The Director (now Chief) of the Administrative Appeals Office (AAO) subsequently dismissed an appeal from the denial decision, and the matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again be dismissed.

The applicant claims to be a native and citizen of El Salvador who is applying for 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 on May 28, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The Director of the AAO subsequently dismissed the applicant's appeal from the denial decision on July 1, 2004, finding that the applicant had not overcome the grounds for denial of the application.

On motion, counsel for the applicant submits a statement and additional evidence.

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 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 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. 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 period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The applicant filed his initial TPS application on July 19, 2001.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b)

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection in November 2000.

On November 5, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided:

1. an affidavit dated December 8, 2002, from [REDACTED] stating that the applicant has worked at West End Pizza in Long Beach, New York, "since February 13, 2001."

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 28, 2003.

On appeal, the applicant stated that he believed he had met his burden of proof and submitted the following additional evidence:

2. an affidavit dated June 17, 2003, from [REDACTED] stating that he has known the applicant "since he came to the United States in October 2000."
3. an affidavit dated June 17, 2003, from [REDACTED] stating that the applicant has been in the United States since December 2000;" and,
4. an affidavit dated June 19, 2003, from [REDACTED] stating that he has known the applicant "since he came to the United States in October 2000."

The Director of the AAO dismissed the appeal on July 1, 2004, because the applicant had not submitted sufficient evidence to overcome the grounds for denial of the application.

On motion, counsel asserts that "it would be fundamentally unfair" to deny the applicant's TPS application when he has submitted "statutorily sufficient evidence." Counsel submits an affidavit from the applicant in which the applicant claims that he entered the United States on or about September 28, 2000 and applied for TPS "five months after entering the U.S." The applicant states that he was "without documents for this entire period," and that, as an undocumented person, it was difficult for him to obtain documents to establish his eligibility for TPS. Counsel also submits a photocopy of the applicant's New York State Identification Card issued on February 10, 2004.

The applicant originally indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States in November 2000. On appeal, the applicant claimed that he entered the United States without inspection "on or about September 28, 2000." The statement contradicts his previous claim to have entered the United States in November 2000. [REDACTED] (No. 2 above) and [REDACTED] (No. 4 above) stated in their affidavits that the applicant entered the United States in October 2000. This statement directly contradicts the applicant's claims to have entered in November 2000 and September 2000. Furthermore, the applicant has subsequently submitted another Form I-821 on May 12, 2005, seeking renewal of his temporary treatment benefits. The applicant indicated on that application that he entered the United States in November 2000. The applicant has not provided any explanation for these contradictions in his claimed date of entry into the United States. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on 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. (Comm. 1988).

Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v). As previously explained by the Chief of the AAO, the employment letter from [REDACTED] (No. 1 above) 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, [REDACTED] does not provide any information regarding the applicant's duties or the address where the applicant resided during the period of his employment.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. 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 AAO decision dated July 1, 2004, will be affirmed.

Beyond the decision of the director, it is noted that the applicant has also failed to submit sufficient evidence to establish his identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the application also must be denied for this reason.

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 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.