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U.S. Citizenship  
and Immigration  
Services

M1

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 17 2006

[EAC 01 251 53747]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again by the Director, Vermont Service Center. The case 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director initially denied the application on July 29, 2003, because the applicant failed to respond to a request for additional evidence dated May 27, 2003. On September 11, 2003, the applicant filed an appeal from the denial decision.

On January 23, 2004, the director rejected the appeal as untimely filed but accepted it as a motion to reopen. The director denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On appeal, 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 Form I-821, Application for Temporary Protected Status, on August 13, 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 on December 24, 1999.

On August 29, 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 the following documentation:

1. a photocopy of a baptism certificate from St. Rita Church in Alexandria, Virginia, indicating that [REDACTED] daughter of the applicant and [REDACTED] was born in Alexandria, Virginia on April 5, 2000, and was baptized in the church on October 13, 2002;
2. a photocopy of a money transfer receipt dated November 11, 2002;
3. a letter dated November 7, 2002, from [REDACTED] General Manager and Partner of Southside 815, a restaurant in Alexandria, Virginia, stating that the applicant has worked in his restaurant since November 2001, first as a dishwasher and subsequently as a cook; and,
4. an earnings statement from [REDACTED] in Fairfax, Virginia, dated June 5, 2002.

On May 27, 2003, the applicant was requested to submit evidence to establish his identity and nationality. The record does not contain a response from the applicant.

The director denied the application on July 29, 2003, because the applicant failed to respond to a request for additional evidence dated May 27, 2003.

On September 11, 2003, the applicant filed an appeal from the denial decision. On appeal, the applicant stated that he had responded to the request for additional evidence. He submitted the following additional evidence of residence and physical presence in the United States:

5. a photocopy of the biographic page of his Salvadoran passport issued in Washington, D.C., on May 9, 2002;
6. a photocopy of an earnings statement from Southside 815 dated February 1, 2002;
7. photocopies of earnings statements from [REDACTED] dated: February 20, 2002; March 5, 2002; March 20, 2002; April 20, 2002; May 20, 2002; June 5, 2002; and, July 5, 2002;
8. photocopies of earnings statements from Professional Maintenance in Woodbridge, Virginia, dated September 24, 2001 and October 9, 2001; and,
9. a photocopy of an earnings statement from [REDACTED] in Arlington, Virginia, dated September 21, 2001.

The director rejected the appeal as untimely filed but accepted it as a motion to reopen. The director denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On appeal, counsel for the applicant states that the director erred in denying the application because the applicant has provided "ample evidence of his continued residency in the United States since February 13, 2001." Counsel submits the following:

10. a letter dated May 28, 2003, from [REDACTED] in Fairfax, Virginia, stating that the applicant has worked for the company as a janitor;
11. a photocopy of a money transfer receipt dated October 6, 2001;
12. photocopies of earnings statements from Southside 815 dated September 6, 2003 and January 16, 2004.

The applicant has not submitted any evidence to establish his qualifying continuous residence in the United States during the period from February 13, 2001 to August 13, 2001, the filing date of his TPS application. He has, thereby, failed to establish that he has met the continuous residence requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has also failed to establish continuous physical presence in the United States during the period from March 9, 2001 to August 13, 2001. He has also failed to establish that he has met the continuous physical presence requirement described at 8 C.F.R. § 244.2(b). 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.