U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 0 4 2007

[EAC 02 086 51004]

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, reopened, and denied again by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted and 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 denied the application on March 3, 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.

On May 27, 2003, the applicant filed an appeal from the denial decision. On appeal, the applicant submitted additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On October 20, 2003, the director rejected the appeal as untimely filed but accepted it as a motion to reopen. The director affirmed his prior decision, finding that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant filed an appeal from the director's denial on November 15, 2003. On appeal, the applicant requested that his TPS application be granted and submitted additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite period.

The Director of the AAO dismissed the appeal on February 2, 2005, finding that the applicant had not overcome the grounds for denial of the application.

On March 4, 2005, counsel for the applicant filed a motion to reopen the case. On motion, counsel 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 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 § 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.

(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 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 granted until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his/her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on January 10, 2002.

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).

As previously stated, the director denied the application on March 3, 2003, and again on October 20, 2003, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On February 2, 2005, the director of the AAO affirmed the director's decision to deny the application, finding that the applicant had not overcome the grounds for denial of the application. The director of the AAO addressed the evidence previously submitted to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods. That evidence will not be addressed again in this decision.

On motion, counsel for the applicant asserts that the applicant was the victim of an unscrupulous notary public who "preyed upon his ignorance as a non-English speaker." Counsel further asserts that the applicant's prior representative failed to advise him of the need to provide additional supporting documents or improperly advised the applicant that it was too late to submit the required documents. Counsel submits the following additional evidence:

1. an affidavit from the applicant dated March 3, 2005, in which he states that he had been the victim of an unscrupulous notary public who misrepresented himself to the applicant and other TPS applicants as a licensed attorney with the firm [redacted] and asserting that the applicant failed to submit sufficient evidence to establish his eligibility for TPS due to inadequate representation by [redacted]

2. an affidavit dated March 3, 2005, from [redacted] stating that he has known the applicant since January 2001; and,

3. photocopies of evidence previously submitted in support of the application.

On appeal, the applicant asserts that the applicant was the victim of an unscrupulous notary public who took advantage of the applicant's ignorance as a non-English speaker. However, counsel has not submitted any

independent evidence to corroborate his assertions other than an affidavit from the applicant. Therefore, counsel's assertion cannot be accepted.

On motion, counsel submits an affidavit from a friend attesting to the applicant's continuous residence and continuous physical presence in the United States during the requisite periods.

Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. 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).

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 determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the prior decisions of the service center director and the director of the AAO 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 motion is dismissed.