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[REDACTED]

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FILE: [REDACTED]  
[EAC 01 236 55975]

Office: VERMONT SERVICE CENTER

Date: JAN 29 2007

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.

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 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 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 appeal, 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 30, 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 record reveals that the applicant was apprehended by the United States Border Patrol near Eagle Pass, Texas, on April 28, 2001, after having entered the United States without inspection. The applicant told the officers that he left El Salvador on March 15, 2001, and entered Guatemala on March 16, 2001, and from there traveled to Mexico. He indicated that he subsequently attempted to enter the United States from Nuevo Laredo, Mexico, but was twice apprehended and returned to Mexico. The applicant's entry into the United States on April 28, 2001, was his third attempt to enter without inspection.

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on April 28, 2001. In support of his application, the applicant submitted the following evidence:

1. photocopies of documents dated May 10, 2001, and June 18, 2001, relating to his removal proceeding.

On May 14, 2003, 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:

2. photocopies of CIS notices dated July 30, 2001, acknowledging receipt of the applicant's Form I-821, Application for Temporary Protected Status, and his Form I-765, Application for Employment Authorization Card; and,
3. a photocopy of his Employment Authorization Card valid from September 1, 2002 to September 9, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 12, 2003.

On appeal, the applicant states that he doesn't understand why his application has been denied when he has already submitted documents to establish his eligibility for TPS and been issued two Employment Authorization Cards. He further states that he is married and is the father of a child. The applicant submits the following evidence:

4. photocopies of CIS documents dated from April 28, 2001 through September 17, 2001, relating to the applicant's removal proceeding and his immigration bond;
5. a photocopy of a [REDACTED] E-Ticket indicating that the applicant was scheduled to fly from Dallas Texas, to New York, New York, on May 14, 2001, with a return flight from New York, New York to Dallas, Texas, scheduled on May 20, 2001;
6. photocopies of documents dated in 2003 relating to the applicant's repayment of his breached immigration bond; and,
7. a photocopy of a CIS notice acknowledging receipt of a Form I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, filed on the applicant's behalf by [REDACTED] [REDACTED] [REDACTED]), seeking to classify the applicant as the spouse of a lawful permanent residence of the United States.<sup>1</sup>

The applicant did not enter the United States until April 28, 2001. Therefore, he cannot establish his qualifying continuous residence and continuous physical presence in the United States prior to that date. 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 director's decision to deny the application for TPS will be affirmed.

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<sup>1</sup> It is noted that CIS computer records indicate that the petition was approved on May 16, 2005.

It is noted that an Immigration Judge in Dallas, Texas, ordered the applicant removed to El Salvador in absentia on July 10, 2001. The record contains an outstanding warrant of removal issued by the District Director, Dallas, Texas, on September 24, 2001.

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.