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U.S. Citizenship
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FILE: [REDACTED]
[EAC 02 295 50847]

OFFICE: Vermont Service Center

DATE: JUN 04 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. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a national 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 the grounds that the applicant failed to establish that he had resided continuously in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001.

On appeal the applicant submits some additional documentation.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 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.

- (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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid through 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 Citizenship and Immigration Services (CIS). See 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. See 8 C.F.R. § 244.9(b).

The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on September 9, 2002, the final day of the initial registration period for El Salvadoran nationals. In a letter dated August 19, 2003, the director requested the applicant to submit evidence showing that he had continuously resided in the United States since February 13, 2001, and been continuously physically present in the country since March 9, 2001. In response the applicant, who claims to have entered the United States without inspection on September 11, 2000, submitted the following documentation:

1. An affidavit from [REDACTED] dated September 13, 2003, who stated that the applicant rented a room in his house at [REDACTED] in Hempstead, New York, from October 2000 until August 31, 2003.
2. Pay stubs/earnings statements in the applicant's name from Sodexho [Management, Inc.] in Bethesda, Maryland, covering the time frame of March to May 2003.
3. Western Union money transfers dated November 13, 2001, and December 1, 2001, from the applicant to [REDACTED], and dated August 16, 2003, from [REDACTED] to the applicant.

On April 22, 2004, the director denied the application, determining that the applicant had failed to submit sufficient 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.

On appeal the applicant submits the following additional documentation:

1. An affidavit from [REDACTED] of Hempstead, New York, dated February 18, 2004, who stated that he met the applicant in New York in December 2000 and had "worked at the same establishment" with him since late 2001.
2. An affidavit from [REDACTED] of Longbeach, New York, dated February 17, 2004, who stated that she had known the applicant since January 2001.
3. A 2003 Form W-2, Wage and Tax Statement, issued to the applicant from Sodexho Management, Inc., Agent for SDH Services West, LLC, of Bethesda Maryland.
4. A 2003 Form W-2, Wage and Tax Statement, issued to the applicant from Safavieh Carpets & Rugs, Inc. of Carle Place, New York.

The AAO determines that the evidence of record does not establish the applicant's continuous physical presence in the United States from March 9, 2001, and continuous residence in the United States since February 13, 2001, as required for TPS nationals from El Salvador under 8 C.F.R. § 244.2(b) and (c). The only documentation in the record going back to 2001 are the Western Union money transfers from November and December of that year, neither of which identifies an address in the United States for the applicant. There is no documentation at all prior to November 2001. As for the three affidavits prepared in September 2003 and February 2004, they provide few details about the applicant's life in the United States and whether he was continuously resident and physically present in the country during the requisite years. Moreover, letters from acquaintances are not, by themselves, persuasive evidence of an alien's residence or physical presence in the United States. In conclusion, the evidence submitted by the applicant does not meet the documentary standards set forth in 8 C.F.R. § 244.9(a)(2) to demonstrate his continuous residence and continuous physical presence in the United States for the requisite time periods beginning in February and March 2001.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity in accordance with the provisions of 8 C.F.R. § 244.9(a)(1). The application must also 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 that burden.

ORDER: The appeal is dismissed.