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FILE: [REDACTED]
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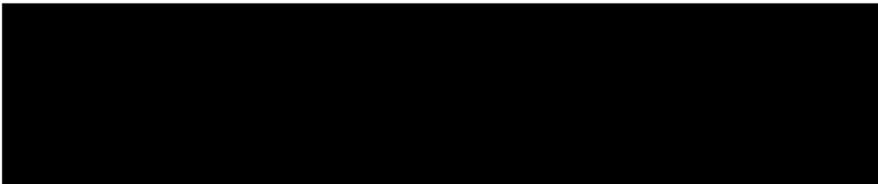
Office: VERMONT SERVICE CENTER

Date: JUN 22 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:



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
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 sustained.

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 because the applicant failed to establish continuous physical presence in the United States since March 9, 2001 and because the applicant failed to establish that he had been granted advance parole prior to his departure from the United States in 2002.

On appeal, the applicant submits 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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 initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 14, 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 October 1995. In support of his application, the applicant submitted the following:

1. a photocopy of the biographic page of his El Salvadoran passport issued in Washington, D.C., on December 16, 1999;
2. a photocopy of his Virginia Identification Card issued on April 14, 2000;
3. photocopies of earnings statements from [REDACTED], in Springfield, Virginia, dated: August 8, 2000; March 7, 2001; March 21, 2001; May 7, 2001; and, May 18, 2001.¹
4. a photocopy of a money transfer receipt dated February 26, 2001; and,
5. a photocopy of a receipt for service fee from Hogar Hispano, Catholic Charities in Falls Church, Virginia, dated March 29, 2001.

The record reveals that the applicant last arrived in the United States at Dulles International Airport, Washington, D.C., on May 22, 2002, on Taca Airlines Flight # [REDACTED] from El Salvador. The applicant presented himself for immigration inspection with his Salvadoran passport and a valid Form I-512, Authorization for Advance Parole of an Alien To the United States, issued by the District Director, Washington, D.C., on April 26, 2002. On May 22, 2002, the applicant was determined to be inadmissible to the United States under sections 212(a)(9)(B)(i)(I) of the Act and 212(a)(7)(A)(i)(I) of the Act and placed in removal proceedings. On July 7, 2002, an Immigration Judge in Arlington, Virginia, administratively closed the removal proceedings because the applicant had a pending application for TPS.

On January 21, 2004, the applicant was requested to submit evidence establishing his qualifying continuous physical presence in the United States during the requisite period and evidence to establish that he had been granted advance parole prior to his departure from the United States for El Salvador. The applicant's former attorney, in response, stated that the applicant could not provide a copy of the Form I-512 advance parole document because it was retained by the Immigration Inspectors at Dulles International Airport. Counsel further stated that she was filing a Form G-639, Freedom of Information Act Request, and would attempt to obtain a copy of the applicant's Form I-512. Counsel submitted a photocopy of a Form I-131, Application for Travel Document, filed by the applicant requesting advance parole, a photocopy of a sworn statement taken by the Immigration officers at Dulles International Airport, and a photocopy of the Form G-639.

¹ It is noted that these receipts bear a different social security number and name spelling [REDACTED] and [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous physical presence in the United States during the requisite period and had failed to establish that he had been granted advance parole and denied the application on July 16, 2004.

On appeal, counsel states that the applicant's previous attorney had provided evidence that she was attempting to obtain a copy of the applicant's Form I-512 but she failed to submit additional evidence to establish the applicant's qualifying continuous physical presence in the United States since March 9, 2001. Counsel submits the following:

6. an affidavit from [REDACTED] stating that she met the applicant at the end of 1999, that the applicant moved in with her in February 2000, that they have lived together since that date, and that the applicant's only absence outside the United States was a brief trip to El Salvador when his father died in 2002;
7. photocopies of earnings statements from [REDACTED] for the following pay periods: February 16, 2002 to February 28, 2002; March [illegible] 2002 to March 31, 2002; April 1, 2002 to April 15, 2002; August 16, 2002 to August 31, 2002; September 1, 2002 to September 15, 2002; October 1, 2002 to October 15, 2002; February 1, 2003 to February 15, 2003; March 16, 2003 to March 31, 2003; April 1, 2003 to April 15, 2003; May 1, 2003 to May 15, 2003; May 16, 2003 to May 31, 2003; June 1, 2003 to June 15, 2003; June 16, 2003 to June 30, 2003; and, December 1, 2003 to December 15, 2003.
8. photocopies of earnings statements from [REDACTED] dated August 25, 2000; October 20, 2000; November 16, 2000; and December 28, 2000;
9. a billing statement dated October 21, 2003, from [REDACTED] Arlington, Virginia; and,
10. a photocopy of a Form I-862, Notice to Appear, dated May 23, 2002.

The first issue to be addressed is whether the applicant's absence outside the United States was brief, casual and innocent as described at 8 C.F.R. § 244.1, as supported by a valid Form I-512.

The record of proceeding contains the original Form I-512 issued by the District Director, Washington, D.C., on April 26, 2002, indicating that the applicant had been authorized advance parole for emergent or humanitarian reasons. The record also contains the applicant's Salvadoran passport issued in Washington, D.C., on December 16, 1999. The applicant's Salvadoran passport contains a Salvadoran entry stamp indicating that the applicant arrived in El Salvador on April 27, 2002. As previously stated, the applicant arrived at Dulles International Airport from El Salvador on May 22, 2002. The applicant was outside the United States for less than one month, and he arrived at Dulles International Airport within the time allotted bearing a valid Form I-512 authorizing his return to the United States. The record clearly establishes that the applicant was authorized advance parole, and that his absence outside the United States was brief, casual and innocent. Therefore, this ground for denial of the application has been overcome.

The second issue in this proceeding is whether the applicant has established continuous physical presence in the United States since March 9, 2001.

The director's determined that the applicant had failed to establish continuous physical presence in the United States since March 9, 2001.

It is determined that the documentation submitted by the applicant in response to the Notice of Intent to Deny, and on appeal, is sufficient to establish that he satisfies the physical presence requirement described in 8 C.F.R. § 244.2(b), and this ground for denial of the application also has been overcome. Therefore, the director's decision will be withdrawn, the appeal will be sustained, and the application for TPS is granted.²

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. In this case, the applicant has met this burden.

ORDER: The appeal is sustained.

² It is noted that a Form I-821 subsequently filed [EAC 05 221 71628] was stamped as approved on December 22, 2005, and that an undated, unsigned notation in the record also indicates that the application appeared approvable to the reviewing official.