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**U.S. Citizenship
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Services**

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[REDACTED]

FILE: [REDACTED]
[EAC 02 188 50800]

Office: Vermont Service Center

Date: **MAR 01 2007**

IN RE: Applicant:

[REDACTED]

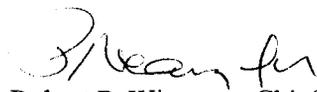
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[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, and 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 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts his claim of eligibility for TPS and submits some evidence in an attempt to support his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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 entry on or prior to February 13, 2001, 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 has been granted by the Secretary of the Department of Homeland Security, with validity until 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). 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. 8 C.F.R. § 244.9(b).

In support of his TPS application, the applicant submitted the following documentation:

1. Copies of his El Salvadoran birth certificate, with English translation; and,
2. An affidavit dated May 8, 2002, from [REDACTED] who stated that she met the applicant on February 10, 2001.

On May 27, 2003, the director requested the application to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The director determined that the record did not contain a response from the applicant and therefore, denied the application on July 24, 2003. The applicant filed an appeal which was remanded to the director.

The director reopened the applicant and on October 19, 2005, again requested the applicant to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The record did not contain a response from the applicant; therefore, the director denied the application again on December 23, 2005.

On appeal, the applicant, through counsel, states that he did not receive the director's October 19, 2005, request for evidence. The applicant also provides the following additional documentation in support of his appeal:

3. Copies of the biographical pages of his El Salvadoran passport;
4. Copies of his Employment Authorization cards and Social Security card;
5. A copy of a United States Postal Service certified mail receipt dated February 22, 2006;
6. Copies of earnings statements from Colonia Country Club bearing check dates of July 22, 2004, December 23, 2004, March 17, 2005, June 23, 2005, September 1, 2005, and October 27, 2005;
7. Copies of earnings statements from [REDACTED], bearing pay dates of November 3, 2005;
8. A copy of a receipt from [REDACTED] dated August 29, 2005;
9. Copies of MoneyGram receipts dated February 28, 2003, and March 22, 2004;
10. A copy of a receipt dated July 21, 2003, from Mamagus Adv.;
11. Copies of Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, for the years 2001, 2002, 2003, and 2004;
12. Copies of Income Tax Returns for the years 2002, 2003, and 2004, and;
13. Copies of four earnings statements bearing check dates of May 9, 2002, May 30, 2002, June 20, 2002, and January 2, 2003.

The affidavit provided by [REDACTED] regarding the applicant's claimed residence in the United States is not supported by corroborative evidence. Furthermore, the submitted evidence, as noted above, all post-date the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States.

It is also noted that the Social Security number reflected on the earnings statements as detailed in No. 14, above, is [REDACTED]. However, the Social Security number reflected on the applicant's Social Security card, and claimed on his applications for TPS and employment authorization is [REDACTED]. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the above noted discrepancies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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 continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application for temporary protected status 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 met this burden.



ORDER: The appeal is dismissed.