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U.S. Citizenship  
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[REDACTED]

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FILE:

[REDACTED]  
[EAC 03 263 51399]

Office: VERMONT SERVICE CENTER

Date:

MAR 30 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 (VSC), and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 time periods.

On appeal, the applicant submits a statement and additional documentation.

It is noted that there is a properly completed Form G-28, Notice of Entry of Appearance of Attorney or Representative, dated September 16, 2003, contained in the record of proceeding. However, on appeal, the applicant states that he is "no longer retaining him." Therefore, the applicant is considered as self-represented in this matter.

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.
- (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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 filed his Form I-821, Application for Temporary Protected Status, on September 25, 2003, after the initial registration period for El Salvadorans had ended. In support of the application, former counsel for the applicant submitted:

1. A photocopy of the biographical page from the applicant's EL Salvadoran passport;
2. A photocopy of the applicant's El Salvadoran marriage certificate, with English translation, showing his marriage to [REDACTED] in El Salvador on March 14, 1992;
3. A photocopy of an Employment Authorization Document (EAD) issued to the applicant's spouse as a TPS registrant [REDACTED] relates);
4. A photocopy of a MoneyGram international money transfer receipt with a hand-written date of January 28, 2001; and,
5. Photocopies of documentation dated on or after August 28, 2002.

On March 4, 2004, the director requested the applicant, through counsel, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the request.

The director determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director denied the application on November 15, 2004.

On appeal, the applicant submits the following additional documentation:

6. A letter, dated December 3, 2004, from [REDACTED] Coordinator of the Hispanic Apostolate of the St. John Church of God Catholic Parish, Charlotte, North Carolina, stating that the applicant attended the church on Sundays, and had been living in the United States since December 2000;
7. A letter, dated November 30, 2004, from [REDACTED] owner of Multi-Service Communications, Charlotte, North Carolina, stating that the applicant had been known to him since December 30, 2000;
8. A letter, dated December 1, 2004, from BK & Company, Bay Shore, New York, stating that the applicant had worked for the company as an independent contractor (during an unspecified period of time);
9. An un-dated letter from [REDACTED], Central Islip, New York, stating that the company had assisted the applicant since December 2000;
10. A photocopy of an Internal Revenue Service (IRS) Form W-7, Application for IRS Individual Taxpayer Identification Number, stamped received by the IRS on July 23, 2002;
11. A photocopy of a Department of Treasury (IRS) notice, dated August 22, 2002;
12. A photocopy of a Cooperativa Comunitaria Latina Credit card, with no place or date of issuance;
13. A letter from [REDACTED] Manager of [REDACTED], Huntington Station, New York, stating that the applicant had been a client since April 2003; and,
14. Several letters from acquaintances attesting to their knowledge of the applicant.

On his Form I-821, the applicant claimed to have last entered the United States on December 8, 1988. On appeal, he states that he initially entered without inspection in 1988, returned to El Salvador, attempted to reenter the United States using a fraudulent document in 1992, again returned to El Salvador, reentered the

United States without inspection in May 1992, returned to El Salvador in 1994, and last reentered the United States without inspection on December 26, 2000.

No. 1, above establishes the applicant's identity and nationality, as required under the provisions of 8 C.F.R. § 244.9(a)(1). Nos. 2 and 3 establish his eligibility for late registration, as required under the provisions of 8 C.F.R. § 244.2(f)(2)(iv). Nos. 5, 10, 11, and 13 indicate the applicant's presence in the United States on or after July 2002.

The affidavits provided by the applicant's acquaintances (No.14, above) are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The affidavit from the St. John Church of God Catholic Parish (No. 6) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was registered as a parishioner at the church. The employment letter (No. 8) also has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's duties with the company. Furthermore, it is not supported by any corroborative documentation, such as pay stubs and company employment records. Similarly, No 9 is not supported by objective evidence. No. 4, the only document provided prior to the required dates, is a photocopied document with a hand-written date of receipt.

Based on a review of the record, it is concluded that the applicant has not submitted sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

It is noted that the record reveals that the applicant attempted to unlawfully enter the United States at John F. Kennedy International Airport in New York, New York, on April 3, 1992, by presenting a photo-substituted El Salvadoran passport. He voluntarily returned to El Salvador.

In her denial decision, the VSC director advised the applicant that he "would not have been eligible for TPS benefits without having filed an Application for Waiver of Grounds of Excludability (Form I-601)," due to his having "attempted to enter the United States on April 3, 1992, by using fraudulent documents, thereby rendering [himself] inadmissible [to the United States] pursuant to Section 212(a)(6)(C) of the INA." On appeal, the applicant asserts that he paid for the submission of a Form I-601, however, does not think that his previous counsel submitted the application. The applicant further asserts that he is submitting a Form I-601 in conjunction with his appeal, however, there is no evidence in the record that the application was submitted.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.