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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

Office:

Vermont Service Center

Date: MAY 21 2007

[EAC 03 022 51517]

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 claims to be 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, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of 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 designations have 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).

Along with his TPS application, the applicant submitted the following documentation:

1. Copies of his El Salvadoran birth certificate along with an English translation;
2. An affidavit dated September 7, 2002, from [REDACTED] who stated that he had known the applicant for two years and that the applicant arrived the United States in August 2000; and,
3. An affidavit dated September 7, 2002, from [REDACTED] who stated that she had known the applicant for two years and that the applicant arrived the United States in August 2000.

The record reveals that on May 30, 2003, the applicant was requested to appear for his fingerprint appointment. On March 11, 2004, the director denied the application due to abandonment, because he determined that the applicant failed to appear for his fingerprint appointment. The applicant, through counsel, filed a motion to reopen the application on April 8, 2004. The director approved the motion to reopen. On December 15, 2004, the director denied the application again because the applicant failed 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, to the date of filing his application.

On appeal, counsel states the applicant is a native of El Salvador who has been in the United States since March 9, 2001. Counsel also provides the following in support of the applicant's eligibility for TPS:

4. Copies of the applicant's El Salvadoran birth certificate along with an English translation;
5. An employment letter dated March 29, 2004, from [REDACTED] owner of Latin Marble Design, who stated that the applicant worked for him from March 7, 2001 to March 12, 2001;
6. A copy of the applicant's Virginia Identification Card issued on March 22, 2001;
7. Copies of two earnings statements dated October 10, 2001, and October 17, 2001, from Neka Marble & Granite, Inc. bearing the name of [REDACTED] and a Social Security number of [REDACTED];
8. Copies of three earnings statements from W. G. Home Improvements dated October 29, 2001, November 12, 2001, and November 25, 2002, bearing the name of [REDACTED] and a Social Security number of [REDACTED];
9. Copies of three earnings statements from American Homes of Northern Virginia reflecting check dates of November 29, 2001, December 5, 2001, and December 12, 2001;
10. A copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the year 2001, bearing the name of [REDACTED] and a Social Security number of [REDACTED];
11. A letter dated April 20, 2004, from [REDACTED] the applicant's landlord, who stated that he has known the applicant, Social Security number [REDACTED], for three years and that he has always paid his rent on time; and,
12. A copy of an IRS Form W-7(SP) dated August 3, 2002.

The statements from [REDACTED] and the copy of the applicant's Virginia Identification Card, as detailed in Nos. 5 and 6 above, fall after the beginning of the requisite time period for continuous residence in the United States. In addition, a review of the earnings statements, and the IRS Form W-2, as detailed in Nos. 7, 8 and 10 above, reflect a Social Security number of [REDACTED]; however, the applicant indicated on his applications for temporary protected status and employment authorization that his Social Security number is [REDACTED]. It is also noted that the earnings statements from Neka Marble & Granite, Inc, as detailed in No. 7, reflect a name of [REDACTED]; however, according to the submitted birth certificate and the applications for TPS and employment authorization, the applicant claims his name 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 in the submitted documentation. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy his 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 for temporary protected status will be affirmed.

The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 11, 2002, after the initial registration period had closed. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. Therefore, the application will also be denied for this reason.

It also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;  
and/or

(iii) Any national identity document from the alien's country of  
origin bearing photo and/or fingerprint.

The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. Therefore, 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 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.