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U.S. Citizenship
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[REDACTED]

SEP 20 2007

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

[EAC 01 179 53211]

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 by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is applying for 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 April 9, 2003, because the applicant failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 13, 2001. The applicant filed the current appeal from that denial decision on May 10, 2003.

On appeal, the applicant states that he is sending a brief and/or evidence to the AAU within 30 days.

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 designated by the Attorney General 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, 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).

On February 28, 2002, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following documentation:

1. Generic rental receipts for the months of February 2001 and February 2002.
2. A payroll receipt issued by Seoul Plaza for the week of March 25 to March 31, 2001.
3. An employee identification card issued by Seoul Plaza.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 9, 2003.

On appeal, the applicant reasserts his claim and submits the following documentation:

4. An employment verification, dated April 19, 2003, from [REDACTED] Korean Restaurant, Flushing, New York, stating that the applicant has been working for that company since December 24, 2000.
5. Generic rental receipts for the months of January, February, March, April and May 2001.

In addition to the above documents submitted in support of the applicant's TPS application and his appeal of the denial, the applicant also submitted the following additional documents together with his re-registration application for TPS under CIS receipt number WAC 05 214 76510 filed on May 2, 2005:

6. A statement from [REDACTED] the applicant's spouse, claiming that they have been residents of the United States, and a copy of an Employment Authorization Card (EAC) issued to [REDACTED] under the category "C19."
7. Marriage certificate, with an English translation, indicating that the applicant and his spouse were married on December 15, 1997.
8. A copy of the applicant's passport issued in Manhattan, New York, on March 6, 2003.
9. Copies of money order receipts from [REDACTED] dated October 31, 2003, and Western Union dated January 16, 2003, June 19, 2003, and October 19, 2002.
10. A copy of a fingerprint notice from CIS dated May 17, 2001.
11. Copies of receipts for a TPS application issued by CIS dated May 17, 2001, and for an application for employment authorization dated May 17, 2001.
12. A copy of U.S. Postal Service Money Order dated April 5, 2004.
13. A copy of an El Cairo Express money remittance dated September 10, 1999.
14. A copy of a purchase receipt from Tucuman, Inc. dated September 11, 1998
15. A copy of an airline boarding pass from Los Angeles to New York dated June 5, 1998.
16. A copy of the applicant's previously issued EACs from June 5, 2001 to September 9, 2002 and from March 10, 2003 to September 9, 2003.

The employment verification from [REDACTED] Restaurant 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, the letter must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. There are also no corroborating documents of the applicant's employment with the company such as pay stubs, W-2 Forms, as well as certification of filing of Federal, State or local income tax returns.

The hand-written rent receipts detailed in No. 5 above are also not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Furthermore, the credibility of these

documents is suspect since the receipts bear no numerical sequence. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility.

The additional documents listed above do not overcome the director's finding that the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 13, 2001. Although the documents listed under numbers 7, 14, 15, and 16 precede the dates required by the regulations, there is no evidence to indicate that the applicant was present and resided in the United States during the year 2000, as well the first three months of 2001.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period required by the regulations. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the VSC director's decision to deny the application for TPS 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 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 this burden.

ORDER: The appeal is dismissed.