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



U.S. Citizenship
and Immigration
Services

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M₁

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: FEB 25 2008

[EAC 02 007 50046]

[EAC 07 043 51507, motion]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act (the 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 Director, Vermont Service Center (VSC), denied the application. The AAO denied a subsequent appeal and a subsequent motion to reopen. The matter is again before the Administrative Appeals Office (AAO) on a motion to reopen. The motion is granted and the appeal will be sustained.

The applicant is a citizen of El Salvador who seeks 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. The director also found that the applicant had failed to establish his Salvadoran nationality.

On motion, counsel for the applicant asserts that the additional evidence submitted establishes the applicant's qualifying continuous residence and continuous physical presence. Counsel 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 as designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for 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 by the Secretary of Homeland Security, 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 on 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).

The record reflects that the applicant filed a TPS application on September 13, 2001 – during the initial registration period for Salvadorans. On, October 30, 2002, the director requested that the applicant submit evidence to show his Salvadoran citizenship, such as a copy of his birth certificate issued by the appropriate civil authority. The director also requested that the applicant submit documents to show his qualifying continuous residence and continuous physical presence. In response, the applicant submitted photocopies of the following documents: his birth certificate, with translation; his Maine identification card, issued on January 3, 2002; his Maine driver's license, issued on July 17, 2002; two receipts signed by [REDACTED], dated January 5, 2001, and February 5, 2001; and a receipt from the Mexican Store, dated January 10, 2001. On June 27, 2003, the director denied the application, finding that the applicant had failed to establish that he is a national of El Salvador and that he had failed to establish his qualifying continuous residence and continuous physical presence.

On July 30, 2003, the applicant submitted the current appeal. On October 25, 2005, the AAO dismissed the appeal, finding that the applicant had established his Salvadoran nationality, but that the various letters submitted on appeal were not specific enough and were not, by themselves, persuasive evidence of residence or physical presence. The AAO found that the letter from [REDACTED] with accompanying rent receipts as well as the

letters from [REDACTED] and [REDACTED] established the applicant's residence and physical presence since March 2001, but that this was not sufficient to establish his continuous residence since February 13, 2001, and his continuous physical presence from March 9, 2001, to the filing date of the TPS application.

The applicant filed a motion to reopen with additional evidence and rewritten statements addressing the concerns of the AAO's October 25, 2005, decision. The motion was dismissed on November 2, 2006, for being filed late, beyond the 30 days of service provided for in the regulations.

On December 4, 2006, counsel for the applicant submitted a motion to reconsider/motion to reopen the November 2, 2006, dismissal of the previous motion. The motion contains an affidavit from [REDACTED] Executive Director of the Immigrant Legal Advocacy Project in Portland, Maine. [REDACTED] asserts that the previous motion to reopen was received late because the applicant relied on inaccurate information about where to file his motion from staff at her organization. Based on this affidavit, the AAO finds that the applicant's failure to file his motion to reopen and motion to reconsider within the thirty-day deadline was reasonable and beyond his control. 8 C.F.R. § 103.5(a). Therefore, the AAO's November 2, 2006 dismissal of the motion to reopen and reconsider is withdrawn and the motion is granted.

On motion, the applicant submits the following:

- A rewritten letter from [REDACTED], formerly [REDACTED], stating that she met the applicant in December 2000;
- A copy of [REDACTED]'s Maine driver's license;
- A rewritten letter from [REDACTED], stating that she first met the applicant in May 2000;
- Receipts for payments of utilities from the applicant, signed by [REDACTED] dated February 9, 2003, through September 30, 2005;
- A rewritten letter from [REDACTED], stating that she met the applicant in February 2001 at Maine Coast Memorial Hospital; and,
- A letter from [REDACTED], stating that she has known the applicant since sometime in the year 2000.

The rewritten letter from [REDACTED], together with the receipts submitted by the applicant and signed by [REDACTED] in 2001, show residence and physical presence immediately prior to and during the initial registration period. [REDACTED] signed the two receipts, dated January 5, 2001, and February 5, 2001, when she still went by the name, [REDACTED]. In her rewritten letter [REDACTED] provides further detail about when and where she first met the applicant. [REDACTED] states that, although she does not recall the specific day she met the applicant; that it was during Eastern Maine Lobster Company's annual Christmas lobster pack, which occurs from December 18, 2000, through December 29, 2000. She recalls that the applicant was introduced to her and her boss, [REDACTED] at the 2000 Christmas lobster pack. She also recalls that during the several months following the 2000 lobster pack, the applicant appeared before her personally to inquire about work.

The rewritten letter from [REDACTED] states that she met the applicant in May 2000 when he began working for her at the sea cucumber processing facility she owns and operates in Milbridge, Maine. She states why she cannot provide corroborating evidence of this, explaining that the applicant stayed at one of the facility's housing units and paid \$50 a month towards the utility bills of the unit. [REDACTED] states that she is unable to find utility payment receipts from the applicant during that time because they have been lost or destroyed. Instead, she submits various receipts for \$50 from the applicant, dated in 2003, 2004, and 2005.

The rewritten letter from [REDACTED] provides further detail about the circumstances under which she first met the applicant and the circumstances in which she had further subsequent contact with him. She states that she first met the applicant at Maine Coast Memorial Hospital, where she worked as a translator, and where the applicant accompanied his roommates, who had just had a baby. She explains that she met the applicant fairly frequently at the hospital, whenever he accompanied his roommates there.

Along with the letter from [REDACTED] and accompanying receipts mentioned in our previous decision, these documents establish that the applicant continuously resided in the United States since February 13, 2001. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be withdrawn.

The applicant's birth certificate establishes his nationality, and his Maine driver's license establishes his identity. The director's decision to deny the application on this ground will also be withdrawn.

An alien applying for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The motion is granted and the appeal is sustained.