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U.S. Department of Homeland Security
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U.S. Citizenship
and ImmigratiQn
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 04 2008
[EAC 02 19950675]

INRE: 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.

A handwritten signature in cursive script that reads "John H. Vaughan". Below the signature, the name "Robert P. Wiemann" is printed.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen. The motion will be granted and the appeal will be dismissed.

The applicant is a citizen of EI 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 applicant filed his initial Form 1-821, Application for Temporary Protected Status, on May 18, 2002. Action on the application was automatically terminated pursuant to Operation Instruction (01) 103.2 on September 5, 2003, because the applicant failed to respond to a request for evidence dated July 3, 2003. The VSC director reopened the application on February 9, 2004, at which time the applicant was again requested to submit evidence in support of his application. On May 5, 2004, the VSC director denied the application. An appeal from that decision, filed on June 4, 2004, was remanded by the AAO on October 31, 2005, because the director's denial did not specifically state the reason(s) for denial. The VSC director subsequently determined that the applicant had failed to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, and again denied the application on February 6, 2006. An appeal from that decision, filed on February 24, 2006, was dismissed by the AAO on March 5, 2007. The applicant filed his current motion to reopen from the AAO's dismissal on April 2, 2007. On motion, the applicant submits a brief statement and additional documentation.

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 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).

The record contains photocopies of the following documentation submitted by the applicant in support of his claim to eligibility for TPS: the biographic page from his El Salvadoran passport; affidavits, dated May' 19, 2004, from two acquaintances attesting to their knowledge of the applicant's having lived in the United States since 1999; medical records, billing statements, and other related documentation indicating the applicant's treatment in the United States in July 2000, July and October 2001, October and November 2002, March 2004, and May, July, and September 2005; an account statement from East Boston Neighborhood Health Center, dated November 25, 2002, showing periodic activity from July 14, 2001, through to the date of the statement; and, a handwritten letter from resident o dated May 17, 2004, stating that the applicant had been employed since January 2001.

The applicant claims to have lived in the United States since January 8, 1999. Letters from acquaintances are not, by themselves, persuasive evidence of **qualifying** continuous residence and continuous physical presence. The employment letter from RJA Industries, Inc., 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 specific duties with the company.

The medical record, billing statements, and related documentation submitted, when viewed in a light most favorable to the applicant, suggest that he was present in the United States on the dates previously noted. However, without more corroborative evidence, the documentation submitted is not sufficient to establish that the applicant was continuously resident and continuously physical present in the United States during the requisite time periods.

It is concluded that the applicant has not submitted sufficient credible evidence to establish his **qualifying** continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing his application on May 18, 2002. Therefore, he has failed to establish that he meets the eligibility criteria for TPS described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for these reasons will be affirmed.

Furthermore, it is noted that as a result of being fingerprinted in connection with his application for TPS, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant was charged in Boston, Massachusetts, on October 18, 2002, with "Distribution of Class D, Drugs," and on June 7, 2005, with "Assault and Battery" and "Destruction or Injury of Personal Property." The record contains evidence from the East Boston District Court, Boston, Massachusetts, dated June 8, 2005, that the applicant on April 10, 2003, pleaded guilty to, and was found guilty of, the offense of "Drug, Distribute Class D," in violation of "94C§32C(a)." Therefore, it appears that the applicant is inadmissible to the United States under Section 212(a)(2)(A)(i)(II) of the Act, due to his conviction of a drug related offense. There is no waiver **available** to a TPS applicant who is inadmissible under Section 212(a)(2)(A)(i)(II) of the Act. 8 C.F.R. § 244.3(c)(1).

In any future proceedings before CIS, the applicant must submit evidence of the final court disposition of the June 7, 2005, charges against him for "Assault and Battery" and "Destruction or Injury of Personal Property."

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.