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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[WAC 05 229 75595]

Office: CALIFORNIA SERVICE CENTER

Date: **JAN 23** 2008

INRE: Applicant:

[REDACTED]

APPLICAnON: 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.

John H. Vaughan
for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office (AAO) on appeal. 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, counsel for the applicant submits a brief statement.

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 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 § 244.3;
 - (e) Is not ineligible under § 244.4; and
- (1) (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 EI 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. The applicant filed his initial Form 1-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on April 7, 2005 - more than two years and six months after the initial registration period had ended. On his application the applicant indicated that he had entered the United States without inspection on January 10, 2000.

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 shall submit all documentation as required in the instructions or requested by 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).

On May 2, 2006, the applicant was requested to submit evidence establishing his eligibility for late registration, his nationality and identity, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant provided evidence of his nationality and eligibility for late registration. He also provided: affidavits from acquaintances attesting to his having lived in the United States since January 2000; handwritten generic rent receipts for March through May 2000, January and

March 2001, January and March 2002, and February and July 2003; and, other documentation dated on or after September 18, 2004.

The director determined that the applicant had failed to establish his **qualifying** continuous residence and continuous physical presence in the United States during the requisite time periods, and denied the application on October 4, 2006.

On appeal, counsel states that the applicant has lived in the United States since January 10, 2000.

The affidavits from acquaintances provided by the applicant are not, by themselves, persuasive evidence of **qualifying** continuous residence and continuous physical presence, and no corroborative, objective evidence has been submitted to support the handwritten generic rent receipts. Furthermore, CIS records reveal that the U.S. Border Patrol apprehended the applicant entering the United States without inspection on April 4, 2004, near Hidalgo, Texas. On October 13, 2004, an Immigration Judge in Houston, Texas, granted the applicant voluntary departure to El Salvador on or before February 10, 2005, with an alternate order of removal if he failed to depart as granted.¹

It is concluded that the applicant has 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, to the date of filing his application on April 7, 2005. Therefore, he has failed to establish that he meets the criteria 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.

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 failed to meet this burden.

ORDER: The appeal is dismissed.

¹ It is noted that a Form I-601, Application for Waiver of Ground of Excludability, was approved by CIS on November 8, 2006.