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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE:

JAN 30 2008

[EAC 06 322 76581]

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). The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is 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 time periods.

On appeal, counsel asserts the applicant's eligibility for TPS.

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 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 designation have been granted by the Secretary of the Department of Homeland Security, with validity 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 April 5, 2007, the applicant was requested to submit additional evidence to establish his qualifying continuous residence in the United States and continuous physical presence in the United States during the requisite time periods for El Salvadoran TPS. The applicant was also requested to submit a copy of his identity document. In response, the applicant provided copies of his Internal Revenue Service (IRS) Form 1040 U.S. Individual Income Tax Returns for the years 2001, 2003, 2004, and 2005; a copy of his California State Driver License issued on May 13, 2004; a copy of his earnings statement from E.C. Labor for the period April 9, 2007 to April 15, 2007; a copy of his earnings statement from Hall Management Corporation dated October 12, 2006; copies of several of his Employment Authorization Documents (EADs) bearing validity periods from February 2, 1997 to March 6, 2006; a copy of his California State Identification Card issued on October 1, 1998; and a copy of the birth certificate of his son born on September 19, 2005.

The director denied the application on May 15, 2007, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States.

On appeal, counsel asserts the applicant's eligibility for TPS. Counsel further states that the record contains sufficient evidence of the applicant's continuous residence and physical presence in the United States.

A review of CIS database records reflects that the applicant has been issued EADs every year since February 22, 1997, based on his pending asylum application. In addition, the applicant has provided additional documentation, such as his earnings statements and government issued identification cards, in support of his qualifying continuous residence and continuous physical presence in the United States. The applicant has

established his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001, to the date of filing his application. Therefore, the director's decision will be withdrawn and the application will be approved.

It is also noted that the applicant's immigration proceedings were terminated on September 1, 2006.

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 sustained and the application is approved.