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U.S. Citizenship
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **JAN 30 2006**

[EAC 05 207 75367 as it pertains to
EAC 02 009 51263 and EAC 03 082 54169]

IN RE:

Applicant:

APPLICATION:

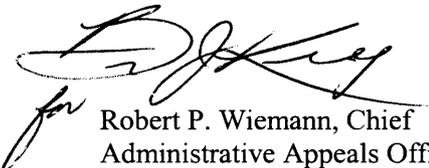
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act (the Act), 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the initial application. The Director, California Service Center (CSC), denied a subsequent application for re-registration which is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, the applications will be approved, 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 applicant filed an initial application for TPS under receipt number EAC 02 009 51263. It appears that a decision on that application was never issued. The applicant filed subsequent applications, including EAC 03 082 54169. The director denied the EAC 03 082 54169 application on January 8, 2004 and again on May 5, 2004, after determining that the applicant had failed to establish his continuous physical presence and continuous residence during the requisite periods. Subsequent registration applications were filed, including EAC 05 152 75523 on March 1, 2005, and WAC 05 207 76357 on April 25, 2005, when the applicant noted that he had not received a receipt notice for this first 2005 filing. The WAC 05 207 76357 application was denied on July 15, 2005, but the denial notice was incorrectly sent to the applicant's previous address. On January 30, 2006, another denial was issued and mailed to the correct mailing address.

On appeal, the applicant submits previously submitted documents and additional evidence. The applicant asserts that he did not realize the importance of the director's requests for further evidence until he received the denial notice of his application.

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 term *continuously physically present*, as used 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 term *continuously resided*, as used 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 the latest extension granted 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 November 27, 2002, the applicant was provided the opportunity to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant did not respond, as requested. On August 13, 2003 and on January 8, 2004 [under EAC 03-082-54169], the director asked the applicant to submit evidence establishing his residence since December 30, 1998 and continuous physical presence since January 5, 1999. The AAO notes that these requests did not specify the appropriate dates for Salvadoran TPS. Again, the applicant did not respond. The director then denied the application on January 8, 2004 and May 5, 2004, based on the applicant's failure to submit sufficient evidence of his continuous physical presence and continuous residence. The applicant did not file an appeal on either of these denials.

A re-registration application was subsequently denied by the Director, CSC, on July 15, 2005, and again on January 30, 2006.

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

1. A copy of the identity page of the applicant's Salvadoran passport issued at Washington, D.C., on September 5, 2000;
2. A copy of the applicant's birth certificate, with translation;
3. A copy of the applicant's 1999 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from Pro Lawn and Landscape, Inc., Beltsville, Maryland;
4. A copy of the applicant's 2001 IRS Form 1040, U.S. Individual Income Tax Return;
5. A copy of the applicant's 2001 and 2002 IRS Forms W-2 from Triple J Construction, Gaithersburg, Maryland;
6. Photocopies of pay receipts from Triple J Construction, dated: November 17, 2000; November 22, 2000; September 7, 2001; September 21, 2001; and, December 7, 2001; and,
7. A copy of a bank statement in the applicant's name, from SunTrust Bank, Maryland, dated March 31, 2001, and indicating that the account was in existence on January 16, 2001.

The passport and birth certificate establish the applicant's nationality. The 1999 IRS Form W-2 indicates that the applicant worked in the United States in 1998. The applicant's passport indicates that the applicant was in the United States in 2000. The 2001 tax information indicates that the applicant worked during 2001. The pay receipts reveal that the applicant was employed in 2000 from at least November 17, 2000 and in 2001 until at least December 7, 2001. The bank statement is dated March 31, 2001 and indicates activity from January 16, 2001 to March 31, 2001. All of these documents establish that the applicant has maintained continuous physical presence in the United States since March 9, 2001, and that the applicant has 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).

Therefore, the director's decisions will be withdrawn, the applications will be approved, and the appeal sustained.

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. Here, the applicant has met this burden.

ORDER: The appeal is dismissed.