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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: Vermont Service Center Date: MAR 03 2004

IN RE: Applicant: [redacted]

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

ON BEHALF OF PETITIONER: 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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 determined that the applicant failed to establish he had continuously resided in the United States since February 13, 2001. The director also noted that the applicant indicated on his TPS and employment authorization applications that he entered the United States on February 22, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that he had previously submitted the information he was able to gather. According to the applicant, he is providing all of the additional information he has with his appeal.

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 [now the Secretary Department of Homeland Security (Secretary)]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.

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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary with validity until March 9, 2005, 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 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 October 28, 2002, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, only provided evidence of his continued physical presence in the United States from March 9, 2001.

On appeal, the applicant states that he had previously provided all of the evidence he was able to obtain. The applicant claims that he is submitting additional documentation with his appeal to prove that he has been in the United States since February 2, 2001. The applicant furnishes letters from Father Jose L. Mena, Pedro Hernandez and Elvin Reyes. In his statement, Father Mena states that the applicant is a volunteer in his parish and that the church supports the applicant's employment authorization application.

Mr. Hernandez states that the applicant has resided in the United States since February 2, 2001. According to Mr. Hernandez, he worked with the applicant beginning in February 2001 and the applicant told him "he had just arrived from El Salvador on February 2, 2001." However, the affiant has not demonstrated that his knowledge of the applicant's entry into the United States is independent of his personal relationship with the applicant. If this knowledge is based primarily on what the applicant told him about his entry into the United States, then his statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Mr. Reyes also claims that the applicant has resided in the United States since February 2, 2001. Mr. Reyes asserts that he was physically present at 272 So. Broadway in Yonkers, New York, on February 2, 2001, when the applicant first arrived in this country. However, neither the applicant nor either of the affiants address or overcome the fact that the applicant listed his arrival date in the United States as February 22, 2001. Consequently, the statements are not persuasive and are of little or no probative value.

The applicant has not submitted any evidence to establish that he has met the criteria for residence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.