**U.S. Department of Homeland Security**
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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 M. 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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant states that an error was made in the preparation of his TPS application. According to the applicant, he has been in the United States since October 12, 2000, but for some reason his original application indicated that he entered the United States on March 11, 2002.

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 since January 5, 1999. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

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 and since December 30, 1998. 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, (now the Secretary), 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 appeal, the applicant states that he actually entered the United States on October 12, 2000, but his application erroneously listed his arrival date as March 11, 2002. However, the applicant's entry date was listed as October 6, 2001, not March 11, 2002 on both the TPS and employment authorization applications. Thus, his claim on appeal also conflicts with the information he provided on his application and is therefore not persuasive.

The applicant also submitted additional documentation and resubmitted evidence previously provided to CIS. Specifically, the applicant presented two receipts. The first is a sales receipt. The applicant claims that the receipt is dated March 11, 2001, and is for the purchase of fruit drinks. According to the applicant, "I had to have been before that date in the City of Richmond to know my surroundings and to know who distributes this products." However, the receipt actually lists March 11, 2001, as an expiration date, but the significance of this is unclear. Moreover, contrary to the applicant's claim, even if the receipt is actually dated March 11, 2001, it does not establish his presence in the United States prior to that date.

The Office of Hispanic Services, Inc, issued the second receipt, dated March 21, 2001. It appears the applicant paid $210 for a TPS application. However, the first TPS application in the record was dated June 19, 2002, over a year later, and was prepared by an individual at another address. Furthermore, this date, as well as the date on the other receipt, is still subsequent to the eligibility period. Therefore, this documents is of no probative value in determining whether the applicant maintained continuous residence and physical presence in the United States during the qualifying period. The applicant is not eligible for TPS as an El Salvadoran because he arrived in the United States subsequent to the eligibility period. Therefore, 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.