U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: OCT 26 2004

IN RE: Applicant: [redacted]
a.k.a [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: 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

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Texas 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 applying for 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 that he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits a statement and additional evidence.

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 designated by the Attorney General 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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on August 5, 2003.

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 December 2, 2003, the director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States and denied the application. The director noted that on the Form I-821, Application for Temporary Protected Status, the applicant indicated his date of entry into the United

States as April 15, 2001. Therefore, the director determined that the evidence does not establish the applicant's continuous residence since February 13, 2001.

On appeal, the applicant states that he is registered under his wife's TPS program so that he may get a social security card and stay legally in the United States. He indicated his wife as On appeal, the applicant also submits the following documentation:

1. A photocopy of a uscis.gov printout of questions and answers, highlighting who is eligible for late registration
2. A Harris County, Texas, Marriage License between the applicant and dated July 24, 2003;
3. A Declaration and Registration of Informal Marriage, Harris County, Texas, between the applicant and dated July 24, 2003, indicating that on or about September 15, 1998, the couple agreed to marry and have presented themselves as a married couple;
4. A CIS receipt notice dated August 7, 2003, acknowledging receipt of the applicant's Form I-765, Application for Employment Authorization; and,
5. Pay stubs dated in 2001 and 200[blank space] from Link Staffing Service t

The record of proceedings also contains documentation relating to the procedural history of the applicant's removal proceedings before the Immigration Judge. This documentation includes a Notice to Appear issued at Hebbronville, Texas, placing the applicant in removal proceedings on April 15, 2001, following the applicant's April 9, 2001, apprehension by the United States Border Patrol while attempting entry into the United States. This evidence of record indicates that the applicant was not present in the United States until April 2001, and consequently is unable to demonstrate his continuous residence and continuous physical presence for the entirety of the requisite periods. In addition, the applicant has provided no explanation of the pay receipts in the name of The applicant has not submitted any other evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, failed to establish that he has met the criteria 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.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his continuous physical presence in the United States since March 9, 2001. As noted above, the documentation reflects that the applicant was not physically present in the United States until April 9, 2001, a date that falls after the required date for continuous physical presence. The application must also be denied for this reason.

Further, it is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. Under the provisions of the Texas Family Code, a common-law marriage may be shown by establishing three factors: (1) an agreement by the parties to be married, (2) living together in Texas after the agreement is made, and (3) representation to others by the parties that they are married. *Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978). The record includes a Declaration and Registration of Informal Marriage, Harris County, Texas, dated July 24, 2003, between the applicant and This document indicates that the couple agreed to be married on or about September 15, 1998, and that they have lived together as husband and wife since that date. While the evidence of record confirms that the applicant's wife was granted TPS, the record also shows that the applicant and his wife did not register their "common-law" marriage until July 24, 2003. In order to be eligible for late registration, the qualifying relationship must have existed during the initial registration period. 8 C.F.R. § 244.2(f)(2). Since the applicant, during the initial registration period, was not the spouse of an

alien currently eligible to be a TPS registrant, he is not eligible for late registration. The application must also be denied for this reason.

It is noted that the record includes a final removal order issued at San Antonio, Texas, on June 24, 2002, based upon the Immigration Judge's determination on May 13, 2002, indicating that the applicant was ordered removed to El Salvador in absentia. The Immigration Judge's order further states that any pending applications for relief were deemed abandoned due to the applicant's failure to appear for his hearing.

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.