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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
[EAC 02 286 51408]

OFFICE: VERMONT SERVICE CENTER

Date: **JUN 05 2006**

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: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and again denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed his application on September 6, 2002. On October 10, 2002, the applicant was requested to report for fingerprinting on November 8, 2002. The record does not contain a response from the applicant and the applicant did not appear to be fingerprinted; therefore, the director concluded that the applicant had abandoned her application and denied the application on August 4, 2003.

The applicant responded to the director's decision on August 16, 2003. The applicant requested that his TPS application be reopened and stated that he never received any notice to be fingerprinted.

On appeal, the applicant's case was reopened and denied on October 13, 2004 when the director determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States and that the applicant had also failed to submit requested evidence relating to his criminal record.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity until September 9, 2007, 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).

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite period.

The applicant initially submitted the following documentation along with his TPS application:

1. An affidavit [REDACTED] in which she stated that the applicant has been living with her and her husband since September of 2000 [REDACTED] Silver Spring, Maryland; and,
2. An affidavit from [REDACTED] in which he stated that he is the applicant's brother and that the applicant has been living with his family [REDACTED] Silver Spring, Maryland since September of 2000, and that he has been economically supporting the applicant.

On July 22, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 13, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

3. Copies of four earnings statements [REDACTED] Maryland, Inc. dated June, July, and August of 2001, and bearing the applicant's name as employee.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. There has been no corroborative evidence submitted to support the statements made [REDACTED] (Nos. 1 and 2 above) regarding the applicant's claimed presence in the United States since September of 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The copies of the earnings statements are dated subsequent to the requisite time period and therefore, cannot be used to establish the applicant's continuous residence and continuous physical presence in the United States.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

The second issue to be addressed is whether the applicant has submitted the final court disposition with regard to his arrest on March 11, 2004 in Rockville, Maryland, on a charge of malicious destruction of property valued over \$500.00.

On July 22, 2004, the director requested that the applicant submit certified judgment and conviction documents from the courts with reference to his arrest on April 20, 2004 in Rockville, Maryland. The applicant failed to respond to the director's request. The director determined that the applicant had failed to establish his eligibility for TPS and denied the application on October 13, 2004.

On appeal, the applicant submitted a final court disposition that showed that a determination of nolle prosequi was entered on the malicious destruction of property charge by the Maryland States Attorney's Office on June 28, 2004. Consequently, the director's decision with respect to this issue will be withdrawn. Nevertheless, the

applicant remains ineligible for TPS due to his lack of sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite period.

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.