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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
[EAC 02 243 52807 and
EAC 06 245 50535-motion]

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.

Robert P. Wiegmann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (VSC), denied the application. The Chief, Administrative Appeals Office (AAO), dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be dismissed.

The applicant is a citizen of El Salvador who is seeks 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 his qualifying continuous residence and continuous physical presence in the United States.

A subsequent appeal from the director's decision was dismissed on July 31, 2006, after the AAO also concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS and submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The burden of proof is on 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 appeal, the applicant submits the following:

1. a 2000 Internal Revenue Service (IRS) Form 1040, Individual Income Tax Return, with attachments;
2. a 2000 Form 1, Massachusetts Resident Income Tax Return, with attachments;
3. a previously submitted copy of his passport; and,
4. a previously submitted letter from the New England Regional Council of Carpenters, AFL-CIO, United Brotherhood of Carpenters and Joiners of America.

The documentation submitted on appeal, together with previously submitted evidence already addressed by the AAO, fails to establish the applicant's qualifying residence and continuous physical presence. The 2000 tax records can be given little weight as they are not accompanied by IRS Forms W-2, Wage and Tax Statements, or certification of filing with the Federal, state or local government, as required by 8 C.F.R. § 244.9(a)(2)(i).

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the motion to reopen will be dismissed and the previous decision of the AAO will be affirmed.

ORDER: The motion to reopen is dismissed and the previous decision of the AAO, dated July 31, 2006, is affirmed.