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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 02 051 54578]

Office: TEXAS SERVICE CENTER

Date: AUG 29 2005

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. Wiemann, Director
Administrative Appeals Office

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 seeking 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 he had continuously resided in the United States since February 13, 2001 and been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant states that he arrived in the United States on January 23, 2001 through Brownsville, Texas. The applicant outlines the evidence that he has submitted for the record to date and forwards additional evidence for consideration.

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, 2006, 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).

Upon initial submission, the applicant provided the following documentation:

1. An affidavit dated November 15, 2001 from [REDACTED] indicating that she has known the applicant in the United States since January 2001 when he came to Houston, Texas.
2. An affidavit dated November 24, 2001 from [REDACTED] indicating that she first met the applicant in El Salvador and that they have been neighbors since January 2001 when he moved to Houston, Texas.
3. An affidavit dated November 24, 2001 from [REDACTED] indicating that she first met the applicant in El Salvador and that they have been neighbors since January 2001 when he moved to Houston, Texas.

On July 27, 2004, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. The applicant, in response, provided the following additional documentation:

4. An affidavit dated August 4, 2004 from [REDACTED] who states that he has known the applicant, his nephew, from birth and that he knows that the applicant came from El Salvador to the United States on January 23, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 17, 2004.

On appeal, the applicant submitted the following additional documentation:

5. A copy of his Texas Department of Public Safety Identification Card issued January 4, 2002.
6. A copy of his Texas Department of Public Safety application fee receipt for a driver's license dated April 3, 2002.
7. Copies of pay slips from [REDACTED] dated July 4, 2001, August 17, 2001, September 19, 2001, October 16, 2001, December 4, 2001, January 18, 2002, February 19, 2002, March 19, 2002, April 4, 2002, and May 4, 2002.
8. A copy of his subscription and rental agreement dated June 9, 2002 with [REDACTED] in Houston, Texas.
9. A copy of his regular savings profile with Bank of America Merlin showing he opened an account with that organization on September 3, 2002.

Affidavits from family and acquaintances are not, by themselves, persuasive evidence of residence or physical presence. The applicant has not submitted any evidence to establish his continuous residence or continuous physical presence in the United States during the period from on or before February 13, 2001 to July 4, 2001 when he was paid for work by [REDACTED]. 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 TPS will be affirmed.

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.

ORDER: The appeal is dismissed.