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U.S. Citizenship
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FILE: [REDACTED]
[EAC 02 258 51826]

Office: VERMONT SERVICE CENTER

Date: JUL 15 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, 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 denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 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 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 § 244.3;
- (e) Is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. Subsequent extensions of the TPS designation has been granted, with the latest granted 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant initially submitted a Western Union money transfer receipt dated July 28, 1999.

On April 9, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, stated that he couldn't submit much evidence to establish his continuous residence and continuous physical presence during the requisite periods because he was in unlawful status and could not open a bank account or have any bills in his name. The applicant submitted an affidavit dated May 2, 2003, from [REDACTED], stating that the applicant rented a room in his condo located at [REDACTED] North Miami Beach, Florida, from November 2000 to October 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 9, 2003.

On appeal, the applicant states that he has lived in the United States "since before February 13, 2001." He submits the following evidence:

1. a Greyhound Bus Line ticket dated April 17, 2001;
2. a Greyhound Bus Line ticket dated October 17, 2001;
3. photocopies of four pay statements from The Steak Escape of Annapolis Mall dated: November 9, 2001; November 23, 2001; December 21, 2001; and January 4, 2002;
4. photocopies of three ADP pay statements from Soupmasters International, Inc., in Easton, Maryland, dated February 15, 2002; April 26, 2002; and, May 19, 2002; and,
5. a photocopy of the applicant's Maryland Identification Card issued on September 4, 2002.

The Western Union money transfer receipt does not establish the applicant's qualifying continuous residence and continuous physical presence during the requisite periods because it is dated prior to the requisite time periods. The applicant has provided one document indicating his presence in the United States as of April 17, 2001, evidence establishing his residence and physical presence in the United States from October 17, 2001 to May 19, 2002, and one document establishing his residence in the United States as of September 4, 2002; however, the applicant has provided only one affidavit in an attempt to establish his continuous residence and continuous physical presence in the United States prior to April 17, 2001. Additionally, the applicant has provided only two documents to establish his continuous residence and continuous physical presence in the United States in 2002.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not provided sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements 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.

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.