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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 228 60464]

Office: VERMONT SERVICE CENTER

Date: JUN 08 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 on appeal before the Administrative Appeals Office (AAO). 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 determined that the applicant failed to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

On appeal, the applicant submits additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, 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 must 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).

The applicant properly filed his initial TPS application on July 13, 2001. In support of his application, the applicant submitted the following documentation;

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A photocopy of his El Salvadoran Personal Identification Card (*cédula*);
3. A photocopy of an undated employee performance evaluation from the Best Restaurant Staff (BRS), Hicksville, New York, indicating that the applicant had been employed in the kitchen department of Carle Place as a salad-man/prep-worker since January 11, 1997; and,
4. Photocopies of earnings statements from Business Resources Services, Inc., Jericho, New York, for the pay periods ending September 21, 1997; September 28, 1997; and, October 12, 1997. The statements indicate the applicant's filing status as "married" and his social security number as [REDACTED]

On December 4, 2002, the director requested the applicant to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was specifically advised that such evidence may include, but was not limited to: employment or school records; rent, mortgage, or medical payment receipts; bank account or insurance documents; medical or utility bills; or other similar materials. The record reflects that 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 July 18, 2003.

On appeal, the applicant submits the following additional documentation:

5. A photocopy of his social security card, number [REDACTED]
6. Photocopies of receipts issued to the applicant by The Dental Center, Hempstead, New York, dated August 28, 2000, and October 2, 2000;
7. Photocopies of earnings statements from Business Resources Services, Inc., Jericho, New York, for the pay periods ending August 12, 1998, and September 2, 1998;
8. A photocopy of a discharge notice from the Nassau County Medical Center, East Meadow, New York, signed by the applicant on October 4, 1999; and,
9. A photocopy of a card issued to the applicant by the Nassau Country Medical Center, East Meadow, New York, on December 30, 1996.

The applicant claims to have continuously lived in the United States since April 20, 1984. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Based on the documentation submitted, the applicant has established that his physical presence in the United States at

various periods dating from December 30, 1996 through October 2, 2000 (Nos. 3, 4, 6, 7, 8, and 9, above). The applicant has provided no documentation to establish his continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing his TPS application on July 13, 2001.

It is noted that there are discrepancies in the evidence documentation presented pertaining to the applicant's marital status and use of a social security number. At the time of filing his TPS application, the applicant indicated that he was single and had never used a social security number; however, Nos. 4 and 7 indicate that he was married and used social security number [REDACTED]. In support of his appeal, the applicant submits documentation indicating that his social security number [REDACTED]. These discrepancies have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous 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.