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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2005**  
[WAC 02 234 54909]

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:  
[REDACTED]

**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 "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California 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 had failed to establish that he had been continuously physically present in the United States from March 9, 2001, to the date of filing his application.

On appeal, counsel submits a statement, and resubmits documentation previously furnished and contained in the record of proceeding.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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).

The record reflects that the applicant filed his TPS application on July 15, 2002. In support of his application, the applicant submitted:

1. An illegible copy of the applicant's El Salvadoran birth certificate.
2. A copy of the applicant's California Identification Card issued on May 27, 2000.
3. A letter dated June 7, 2002, from Santa Cruz Community Credit Union, indicating that the applicant has been a member of the financial institution since June 18, 2000.
4. A copy of a receipt for payment made on January 23, 2001, to Coast Auto Insurance Services, Inc.
5. A letter dated June 13, 2002, from J's Custom Painting, La Selva Beach, California, indicating that the applicant had been working for the company since February 2001.
6. A copy of a statement from Kia Financial Services dated August 26, 2001.
7. A copy of a marriage certificate for the applicant and [REDACTED] of El Salvador, on February 14, 2002, at Santa Cruz, California.

The director determined that the evidence furnished in support of the application was insufficient to establish eligibility. Therefore, the applicant was requested on October 22, 2002, to submit: (1) additional evidence establishing his continuous physical presence in the United States from March 9, 2001, to the date of filing the TPS application; (2) a copy of his birth certificate; and (3) police clearances from every city where he had lived since arriving in the United States, and a copy of the certified court disposition of each arrest. The director listed arrest records of the applicant obtained from the Federal Bureau of Investigation fingerprint results report, indicating that the applicant was arrested on November 27, 1998, in Santa Cruz, California, for "SELL/MAN/ETC BRTH/BAPT CERT TO DECV;" and arrested on March 31, 2001, in Salinas, California, for

driving under the influence of alcohol/drugs. The record shows that the applicant failed to respond to the director's request.

The director determined that, to date, the applicant had not submitted sufficient evidence, including evidence of his continuous physical presence and his identification card with a photograph. He, therefore, denied the application on February 25, 2003.

On appeal, counsel asserts that the evidence submitted by the applicant more than satisfied the burden of proof. He resubmits copies of documents previously furnished and listed as Nos. 1 through 7 above.

It is noted that the record of proceedings does contain a copy of the applicant's identification card with photographs (El Salvadoran passport issued in San Francisco, California, on March 4, 1997; his California Identification Card (No. 2 above); and his California Driver License issued on October 10, 2001). The applicant, however, failed to submit a legible copy of his birth certificate.

While the letter from Santa Cruz Community Credit Union indicates that the applicant had been a member of the financial institution since June 18, 2000 (No. 3 above), no evidence was furnished to corroborate this claim, such as copies of bank statements or cancelled checks. Being a member of a financial institution, without corroborating evidence, is insufficient to establish continuous physical presence in the United States.

Additionally, the employment letter from J's Custom Painting (No. 5 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form and attested to by the employer under penalty of perjury; and the employer does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the periods(s) of layoff, if any, and the applicant's duties with the company.

The applicant has furnished insufficient evidence to establish that he has been continuously physically present in the United States from March 9, 2001, to the date he filed the TPS application on July 15, 2002. Consequently, the director's decision to deny the application for this reason will be affirmed.

Additionally, although the director, in his decision to deny, failed to address the applicant's arrests on November 27, 1998, and on March 31, 2001 (detailed above, and as listed in the director's notice of request for additional evidence dated October 22, 2002), the applicant ultimately has failed to submit police clearances from every city where he had lived since arriving in the United States, and a copy of the final court disposition of all his arrests. These criminal offenses may render the applicant ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), as an alien convicted of a felony or two or more misdemeanors committed in the United States.

Accordingly, the applicant is also ineligible for temporary protected status because of his failure to provide police clearances and the final court dispositions of all his arrests as requested by the director. 8 C.F.R. § 244.9(a).

It is noted that on July 29, 2002, the Immigration Judge administratively closed removal proceedings based on the filing of a TPS application by the applicant.

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.