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FILE: [REDACTED]
[EAC 04 145 51450]

Office: VERMONT SERVICE CENTER

Date: NOV 02 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 he was eligible for late registration. The director also found that the applicant had 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.

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. 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, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on April 15, 2004.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he fell within at least one of the provisions described in 8 C.F.R. 244.2(f)(2) above.

The applicant initially submitted a photocopy of a Salvadoran birth certificate with English translation indicating that the applicant was born to [REDACTED] and [REDACTED] in [REDACTED] El Salvador, on December 4, 1980; a letter dated April 9, 2004, from [REDACTED] who states that he is the applicant's father, requesting that his son be granted TPS; a photocopy of a Social Security card number [REDACTED] issued to [REDACTED]; and, a photocopy of an Employment Authorization Card indicating that [REDACTED], CIS registration number [REDACTED] has been granted TPS.

On May 7, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on June 21, 2004.

On appeal, the applicant states that he didn't apply for TPS during the initial registration period because he was afraid he would be deported and because he didn't have enough money to pay the application fees during that period.

The applicant has submitted a birth certificate indicating that [REDACTED] is his father and an Employment Authorization Card indicating that Mr. [REDACTED] has been granted TPS. Therefore, it appears that the applicant has established that he qualifies for late registration as described in 8 C.F.R. § 244.2(f)(2), and this ground for denial of the application has been overcome.

The second issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant indicated on his TPS application that he last entered the United States on June 11, 2001. As stated above, the applicant was requested on May 7, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

1. an undated letter from [REDACTED] stating that he is the applicant's father, and that the applicant has worked for him in his business, Professional Painting & Carpentry in Hyattsville, Maryland, since December 2002;
2. an affidavit dated May 20, 2004, from [REDACTED] stating that she has known the applicant for two years because he attends her church, "La Voz De Dios;"

3. an affidavit from [REDACTED] stating that he has known the applicant since September 1, 2002;
4. an affidavit from [REDACTED] stating she has known the applicant since March 15, 2001;
5. an affidavit from [REDACTED] stating that he has known the applicant since November 2001; and,
6. an affidavit from [REDACTED] stating she has known the applicant since March 2002.

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

On appeal, the applicant has not provided a statement or any additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States.

The applicant has submitted only affidavits from his father and acquaintances to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant claims to have lived in the United States since June 11, 2001. It is reasonable to expect that he would have some type of contemporaneous documents to support these affidavits; however, no such evidence has been submitted. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described in 8 C.F.R. § 244.9(a)(2)(i) and (v). Furthermore, since the applicant has stated that he did not arrive in the United States until June 11, 2001, he cannot establish continuous residence in the United States since February 13, 2001, and 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 director's decision to deny the application for TPS on these grounds will be affirmed.

The application will be denied for the reasons stated above, with each considered as an independent and alternative basis for denial. 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.