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FILE: [REDACTED]
[WAC 04 226 51716]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **APR 06 2006**

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.

for 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 claims to be 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 submit sufficient evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

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 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 extension valid 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 shows that the applicant filed his TPS application on July 2, 2004. The director determined that the evidence furnished was insufficient to establish that the applicant had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application; therefore, the director denied the application on October 12, 2004.

On appeal, the applicant asserts that he is eligible for late registration because he is the "husband of a member of TPS," and that he had submitted evidence of his residence in the United States. He submits the following:

1. Copies of 17 pay statements issued to [REDACTED] and copies of Form W-2, Wage and Tax Statement, under the name of [REDACTED] for tax years 2001 and 2003
2. Copies of the applicant's Form 1040, Income Tax Return, for 2001, 2002, and 2003.
3. A copy of a letter from Internal Revenue Service dated April 26, 2002, assigning the applicant an identification number.
4. Copies of two letters from Sanabrias Income Tax Service dated July 4, 2002, and from Ritax Inc. dated February 20, 2003, both written in the Spanish language. These documents were not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3),

The documents listed in No. 1 above are all under the name of [REDACTED]. The applicant neither addressed nor submitted any evidence to establish that he and [REDACTED] the same individual. Further, the Forms 1040,

without evidence that they were filed with IRS, are insufficient to establish the applicant's continuous residence in the United States.

The applicant has failed to submit sufficient evidence to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application will be affirmed.

The applicant asserts, on appeal, that he is eligible for late registration because he is the "husband of a member of TPS." It is noted that the applicant filed his TPS application on July 2, 2004, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. The record indicates that the applicant had previously furnished: (1) a copy of his marriage certificate indicating that he and [REDACTED] were married in El Salvador on September 11, 1998; and (2) a statement from [REDACTED] requesting that the applicant be included as her dependent in her TPS application. It is noted, however, that the applicant indicated "N/A" [not applicable] on his Form I-821 application [Part 3. Information about your spouse and children (if any)], and that he resides at [REDACTED]. However, CIS records show that [REDACTED] had indicated that her marital status is "single" and that she resides [REDACTED]. There is no evidence in the record that the applicant and [REDACTED] married, and that he met the qualification of a spouse of an alien currently eligible to be a TPS registrant described in 8 C.F.R. § 244.2(f)(2)(iv). Therefore, the application will also be denied for this reason.

Additionally, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). The application will also be denied for this reason.

The application will be denied for the above stated reasons, 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.