U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] [EAC 01 187 51391] Office: Vermont Service Center Date: SEP 0 1 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.

Robert P. Wiemann, Chief
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 had continuously resided in the United States since February 13, 2001. The director also denied the application because the applicant failed to establish that he is a national of El Salvador.

On appeal the applicant asserts his claim of eligibility for TPS and submits evidence in support of his claim.

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.

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.

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 by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, 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).

On September 23, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant was also requested to submit evidence that he is a citizen or national of El Salvador. In response, the applicant submitted some evidence in an attempt to support his qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and that he is a national of El Salvador. Therefore, the director denied the application on November 8, 2004.

On appeal, the applicant states that he had complied with all of the requirements for TPS and that he has submitted documentation to establish that he has been physically present in the United States since February 13, 2001. The applicant also provides a copy of his El Salvadoran passport issued on October 1, 2003, by the Consulate General, Boston, Massachusetts. The applicant also provides copies of a previously submitted

memorandum dated October 5, 2004, from stating that the applicant has been employed as a custodian for OneSource, Inc, since December 2, 1998; a copy of a printout reflecting an "Employer" One Source (3450), and a "Hire Date" of August 14, 2000; a copy of a Surgical Dictation dated October 1, 2001, from Boston Medical Center; a copy of a single Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for the year 2001; and, copies of his IRS Form 1040A for the year 2001, that was signed on March 9, 2002.

The first issue is whether the applicant has established that he is a national of El Salvador.

8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

> (a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.
>
> > (1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)
> >
> > > (i) Passport;
> > >
> > > (ii) Birth certificate accompanied by photo identification; and/or
> > >
> > > (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On appeal, the applicant provides a copy of his El Salvadoran passport issued by the General Consulate of El Salvador located in Boston, Massachusetts. The applicant has established that he is a national of El Salvador. Therefore, the director's decision will be withdrawn on this issue.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001.

Although the tax documents may indicate that the applicant was in the United States during the year 2001, these documents do not provide the actual dates of employment. The surgical dictation from the Boston Medical Center postdates the beginning of the requisite time periods for El Salvadoran TPS by seven months. The employment memorandum from 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, does not provide the address where the applicant resided during the period of the applicant's employment. In addition, statement is not supported by corroborative evidence, such as earnings statements or paycheck stubs. In addition, the copy of a computer printout pre-dates the requisite time periods for continuous residence and is not supported by contemporaneous evidence in order to substantiate credibility.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence requirements described in 8 C.F.R. §§ 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time period. 8 C.F.R. § 244.2(b). Therefore, 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 TPS 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.