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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
[EAC 03 008 50878]

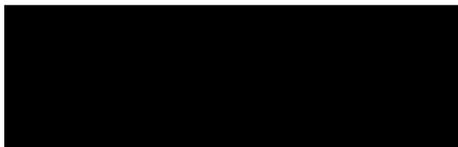
Office: VERMONT SERVICE CENTER

Date: **MAR 30 2007**

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:



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 that he had continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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 parole; 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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid 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 August 19, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 14, 2004.

The applicant appealed the director's decision to the AAO on February 13, 2004. The AAO remanded the case to the Vermont Service Center for the issuance of a new decision that sets forth the specific reasons for the director's denial.

The applicant initially submitted the following documentation:

1. A letter from the pastor of the Evangelical Friends Church of Baltimore who stated that the applicant has been a member of the church since November of 2000.

The applicant submitted the following documentation on appeal:

2. Copies of rent receipts bearing the applicant's name as tenant and dated January and June of 2001.
3. A copy of a Western Union money gram bearing the applicant's name as sender and dated August 24, 2003; and,
4. A copy of a medical statement from Washington Adventist Hospital bearing the applicant's name as patient and dated January 15, 2004.

The director denied the TPS application on November 3, 2005, because the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS. The applicant submitted the following documentation:

5. An affidavit from [REDACTED] in which he stated that his company employed the applicant from January 8, 2001 to April 5, 2004;
6. Copies of the applicant's income tax documents and tax correspondence for the tax years 2001, 2002, and 2003;
7. A letter from [REDACTED] in which she stated that the applicant is her nephew and that he has been living with her and her husband from November 2, 2000 to April of 2004 when he went to live with his other sister in Rhode Island; and,
8. A letter from [REDACTED] in which she stated that the applicant is her nephew and that he has been living with her from April 30, 2004 to the present.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite time periods. The Western Union money gram and the medical statement from Washington Adventist Hospital (see numbers 3 and 4 above) are dated subsequent to the requisite time periods and therefore cannot be used to establish the applicant's eligibility. The copies of the two rent receipts in number 2 above are insufficient to show the applicant's presence in Maryland from February of 2001 to the time of filing, September 9, 2002.

The employment affidavit from [REDACTED] (see number 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 affiant does not provide the location or the type of business he is engaged in, nor did he verify that the business was even located inside the United States.

The applicant's income tax documents in number 6 above do not specify the applicant's dates of employment; and are therefore insufficient to establish the applicant's presence in the United States. The statements from [REDACTED]s and [REDACTED] regarding the applicant's claimed presence in the United States before February 13, 200, are not supported by any corroborative evidence (pay stubs, utility bills, bank account statements, medical records, insurance and school documents, etc.). It is reasonable to expect that the applicant

would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence and physical presence. The pastor's letter (see number 1 above) is insufficient to establish the applicant's presence in the United States during the requisite time periods.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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

ORDER: The appeal is dismissed.