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

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M/

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: FEB 05 2008

[EAC 05 224 72426]

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 Vermont Service Center. 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 (VSC). An appeal from that decision was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decisions of the VSC director and the AAO Chief will be withdrawn. The application will be approved.

The applicant is a 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 on the grounds that 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 country since March 9, 2001.

On motion, counsel for the applicant submits a brief and additional documentation pertinent to the applicant's residence and physical presence in the United States.

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 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.

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. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002.

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). See 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. See 8 C.F.R. § 244.9(b).

The applicant filed his first Form I-821, Application for Temporary Protected Status, on May 25, 2001 (EAC 01 203 52714 relates). It was denied by the director on the ground of abandonment on August 6, 2001. On September 6, 2002, still during the initial registration period for El Salvadoran nationals, the applicant filed another TPS application (EAC 02 282 53059 relates). It was denied by the director on November 19, 2003, on the grounds that the evidence submitted by the applicant failed to establish that he had continuously resided in the United States since February 13, 2001. The applicant filed an appeal from that decision on December 4, 2003, which was dismissed by the AAO on February 14, 2005.

The applicant filed this TPS application on May 12, 2005. In a notice of intent to deny dated January 6, 2006, the director requested the applicant to submit documentary evidence to show that he had continuously resided in the

United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001. The applicant responded with additional documentation.

On July 29, 2006, the director denied the application on the grounds that the additional documentation submitted failed to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Specifically, the director stated that there was no contemporary documentation dated between 1999 and August 2001, and that affidavits and letters from acquaintances were not persuasive evidence, in and of themselves, that the applicant was continuously resident and continuously physically present in the United States from the requisite dates in February and March 2001. The applicant filed an appeal from the director's denial decision with the AAO on August 1, 2006.

On appeal, the applicant pointed out he filed an initial TPS application on May 25, 2001, and that he was issued an Employment Authorization Card on June 26, 2001. As further evidence that he was a resident of and physically present in the United States from February and March 2001, respectively, the applicant submitted three new letters from acquaintances in the United States, a letter from the Salvadoran Red Cross, a photograph, and a letter from the Social Security Administration.

The AAO noted discrepancies and insufficiencies in the documentation provided, and dismissed the appeal on April 27, 2007.

The applicant, through counsel, timely filed the current motion to reopen the AAO's decision to dismiss the appeal on May 31, 2007. On motion, counsel submits additional documentation including (but not limited to) photocopies of: a birth certificate for the applicant's child, born in the United States on August 17, 2001; an airline ticket showing the applicant's travel from Los Angeles, California, to New York, New York, on April 10, 1998; biographic pages from the applicant's El Salvadoran passport, issued in New York, New York, on March 10, 1999; pharmacy records showing an initial record of February 1, 2001 with records dating from September 2003 through May 2007; employment letters; and, additional affidavits from acquaintances.

Based on a review of the record, the AAO now determines that the documentation submitted by the applicant is sufficient to establish that he was continuously physically present in the United States from March 9, 2001, and continuously resident in the United States from February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Therefore, he has established that he meets the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Accordingly, the VSC director's denial of the application, and the Chief of the AAO's decision to dismiss the appeal, will be withdrawn. The application will be approved.

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. Here, the applicant has met that burden.

ORDER: The decision of the VSC director denying the application, dated July 29, 2006, and the decision by the Chief, AAO, dismissing the appeal, dated April 27, 2007, are withdrawn. The application is approved.