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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **NOV 28 2008**

[EAC 08 100 51849, *motion*]
[SRC 01 167 59356]

IN RE:

Applicant:

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 Vermont Service Center office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again be dismissed.

The applicant is stated 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 applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 01 167 59356 during the initial registration period. Prior to a decision being made on his initial Form I-821, the applicant filed a Form I-821 on March 8, 2005, and indicated that he was re-registering for TPS. On September 8, 2005, the Director, California Service Center, approved the March 8, 2005 application granting temporary treatment benefits since his initial I-821 was yet to be adjudicated. On April 12, 2007, the Director, VSC, denied the initial Form I-821 because the applicant had failed to establish he is a citizen or national of El Salvador and that he had been continuously physically present in the United States from March 9, 2001, to the date he filed his application.

A subsequent appeal from the director's decision was dismissed on January 25, 2008, after the AAO Chief also found that the applicant had not established that he had continuously resided in the United States since February 13, 2001, or that he had been continuously physically present in this country since March 9, 2001, to April 4, 2001, the date he filed his initial application. The AAO Chief also noted that the applicant had provided an El Salvadoran birth certificate with a birth date of September 29, 1953. However, the birth date on his El Salvadoran passport that he submitted on appeal listed his birth date as December 8, 1954 and dismissed the appeal because this inconsistency had not been adequately explained or otherwise reconciled. The AAO Chief also noted that the final court disposition of the applicant's December 5, 2006 arrest by the Sheriff's Office in Dallas, Texas, for indecent exposure had not been provided for the record.

On motion to reopen, counsel argues that the applicant is a national of El Salvador and submits a copy of birth certificate along with a translation dated February 20, 2008. Counsel submits an affidavit from the applicant which attempts to explain his belief that the notary who translated his birth certificate inadvertently left the birth date of another individual on his translated certificate. Counsel re-submits a copy of a printout dated May 2, 2007 from Westdale Asset Management in Dallas, Texas, for account "hoa - 109S - hoazero" showing columns for charges, payments and balances for items such as utility fees, rent, and water payments from March 12, 1999 through May 1, 2002. Counsel asserts that this document provides unequivocal evidence that the applicant was present and residing in the United States during the required periods. Counsel submits a copy of a court disposition showing that on February 28, 2007, the applicant was convicted of indecent exposure committed on November 2, 2006, by a Judge of the County Criminal Court 2 in Dallas County Texas, a misdemeanor. (Cause No. [REDACTED]) Counsel states that neither a conviction for one misdemeanor nor a prior removal order preclude 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 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 section 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.
- (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 applicant submitted an El Salvadoran birth certificate naming the applicant with a birth date of September 29, 1953, with his Form I-589, Request for Asylum and for Withholding of Deportation that he filed on July 31, 1998. At his asylum interview on December 10, 1998, the applicant confirmed that [REDACTED] was his date of birth. On motion, counsel submits a copy of another El Salvadoran birth certificate naming the applicant showing his birth date to be December 8, 1954. The date on the second birth certificate carries the same date of birth that is on his El Salvadoran passport. On motion, counsel submits an affidavit from the applicant in which he states his belief that the notary who translated his first birth certificate inadvertently left the birth date of another individual on his translated certificate. This statement by the applicant is not helpful in resolving this issue as the first birth certificate was not accompanied by a translation. It is incumbent upon the applicant to

resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). Based upon this inconsistent documentation, it is determined that the applicant has failed to establish his qualifying El Salvadoran nationality or citizenship. 8 C.F.R. § 244.2(a) and §244.9(a)(1). Consequently, the application shall be denied for this reason.

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 record shows that the applicant filed his application with Citizenship and Immigration Services on April 4, 2001.

A list of the evidence submitted by the applicant to show that he satisfying continuous residence and continuous requirements is shown below:

1. A copy of the applicant's State of Texas identification expiring on December 8, 2001
2. A copy of a Texas vehicle inspection report dated August 31, 2002 for a vehicle under certificate number [REDACTED]
3. A copy of the applicant's State of Texas driver's license expiring on December 5, 2006.
4. A copy of a Republic of El Salvador passport issued to the applicant in Dallas, Texas, on April 26, 2007.
5. A copy of a printout dated May 2, 2007 from Westdale Asset Management in Dallas, Texas, for account "hoa - 109S - hoazerco" showing columns for charges, payments and balances for items such as utility fees, rent, and water payments from March 12, 1999 through May 1, 2002.

The identification card and driver's license listed above do not indicate when they were issued to the applicant (Items # 1 and # 3 above). The vehicle inspection report provided by the applicant is of questionable value because it does not identify him as the owner of the passenger car tested (Item # 2 above). Other than the printout dated May 2, 2007 (Item # 5 above), the applicant has not submitted any evidence to establish his continuous residence from February 13, 2001, or his continuous physical presence in the United States from March 9, 2001,

to April 4, 2001, the date he filed his initial application. 8 C.F.R. §§ 244.2 (b) and (c). Although a copy of Item # 5 listed above was submitted on motion, no additional documentation was submitted for consideration. Consequently, the director's decision remains affirmed for these additional reasons.

The applicant's Federal Bureau of Investigation fingerprint results report shows that on December 5, 2006, he was arrested by the Sheriff's Office in Dallas, Texas and charged with indecent exposure. On motion, counsel submits a copy of a court disposition showing that on February 28, 2007, the applicant was convicted of indecent exposure committed on November 2, 2006, by a Judge of the County Criminal Court 2 in Dallas County Texas, a misdemeanor. (Cause No. [REDACTED]) The record reflects that after the applicant was identified by the arresting officer on November 2, 2006, he was released, a warrant was issued and his December 5, 2006 arrest occurred when he was subsequently taken into custody. On motion, the applicant has submitted the final court disposition for the crime necessitating his December 5, 2006 arrest by the Sheriff's Office in Dallas, Texas cited in his FBI fingerprint results report.

In removal proceedings held on February 23, 1999, an Immigration Judge in Dallas, Texas, ordered the applicant deported "in absentia" to El Salvador. It is further noted that the record contains an outstanding Form I-205, Warrant of Removal/Deportation, issued by the Acting District Director of the Dallas, Texas, office of Citizenship and Immigration Services, (formerly, the Immigration and Naturalization Service) on February 26, 1999.

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.