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U.S. Citizenship  
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Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE: **MAY 25 2007**

[WAC 01 167 54239]

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

*Robert P. Wiemann*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). 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 his continuous physical presence in the United States since March 9, 2001.

On appeal, counsel submits additional evidence.

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 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 § 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

El Salvadoran nationals applying for TPS 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, 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. *See* 8 C.F.R. § 244.9(b).

The record indicates that the applicant was admitted to the United States as a C-1 crewman at Houston, Texas, on June 10, 2000, in transit to join a vessel at a United States port of entry. His stay was authorized until July 8, 2000. In his subsequent Form I-821, Application for Temporary Protected Status, filed with the California Service Center on March 23, 2001, the applicant stated that he entered the United States as a “visitor” at Phoenix, Arizona, on July 10, 2000. The applicant claims that he has remained in the United States in unlawful status since that date.

In an attempt to establish continuous residence and physical presence in the United States, the applicant initially submitted a class registration card from the Montebello Unified School District, Department of Adult Education, in Montebello, California, indicating that the applicant enrolled in an English as a Second Language (ESL) class on September 5, 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 3, 2004.

On appeal, counsel submits the following evidence in an attempt to establish the applicant’s continuous residence and physical presence in the United States during the requisite periods:

1. a letter dated March 23, 2004, from [REDACTED], Principal, Bell Gardens Community Adult School in Bell Gardens, California, stating that the applicant attended ESL classes on Mondays and Thursdays at her school from 2000 through 2002;
2. a Sprint telephone bill dated January 17, 2004;
3. a school photo ID indicating that the applicant was enrolled as an ESL student at South Gate Community Adult School, Los Angeles United School District, South Gate, California, for the 2003-2004 school year;
4. an ADP pay statement indicating that the applicant was paid \$517.65 by Ebus, Inc., for the pay period from November 17, 2003 to November 23, 2003;
5. a Proof of Enrollment form from the State of California Department of Motor Vehicles indicating that the applicant was on a 5-month driving restriction and had enrolled in a driver improvement course conducted by Diversion Safety Program, Inc., in Huntington Park, California, on April 7, 2003;
6. a State of California automobile registration card valid from November 8, 2002 to November 8, 2003;
7. the applicant’s 2002 Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, and a California Form 540A, California Resident Income Tax Return for 2002, reflecting a gross annual

income that year of \$13,731, along with a 2002 IRS Form 8879, IRS e-file Signature Authorization, and a State of California Form 8453, California e-file Return Authorization;

8. the applicant's 2002 IRS Form W-2, Wage and Tax Statement, reflecting an annual income of \$13,731 from Intellisystems, Inc., in Downey, California;
9. a Registration Card from the Los Angeles United School District, Division of Adult Education and Career Education, indicating that the applicant was enrolled in ESL class for the third term of the year 2001; and,
10. an undated Blue Cross HMO insurance card.

The majority of the evidence the applicant has submitted to establish his continuous residence and continuous physical presence in the United States relates to the period from 2002 through 2004. The applicant has submitted only two documents as evidence of his continuous residence in the United States from February 13, 2001 to March 23, 2001, the date his application was filed, and of his continuous physical presence in the United States from March 9, 2001 to March 23, 2001: a "fill-in-the-blank" class registration card from the Montebello Unified School District dated September 5, 2000, and the letter from [REDACTED] stating that the applicant attended ESL classes "on Mondays and Thursdays" at the Bell Gardens Community Adult School in Bell Gardens, California, "during the years 2000 through 2002." The Montebello Unified School District registration card does not appear to have been endorsed by an official of the school confirming that the applicant actually enrolled in and took the ESL class referenced on the card. Furthermore, this document only reflects the applicant's presence in the United States as of September 2000; it does not establish the applicant's qualifying continuous residence and continuous physical presence in the United States because it predates the requisite periods. Additionally, [REDACTED] does not provide the specific dates of the ESL classes the applicant attended. It is noted that the applicant has not submitted any evidence to establish that he actually attended any of the ESL classes referenced by [REDACTED] in her letter.

The applicant claims to have lived in the United States since July 10, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim. However, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. *See* 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 and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.