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

MI

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **FEB 02 2009**
[EAC 02 144 51289]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

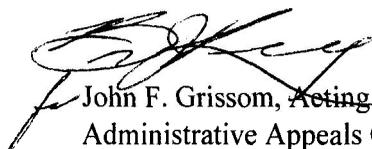
ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. A subsequent appeal was remanded by the Director, AAO. The Director, VSC again denied the application. The applicant appealed the director's decision and it is now before the AAO 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 initially denied the application on August 23, 2003; however, the director's decision did not clearly indicate the specific basis for the denial. On November 29, 2005, the Director (now Chief) AAO remanded the case to the Vermont Service Center for the issuance of a new decision that set forth the specific reasons for the denial.

The director subsequently determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant requests that the director's decision be reviewed. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous 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 as 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 term 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 term 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 granted until September 9, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial application on March 20, 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). 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).

The record shows that the applicant filed his TPS application on March 20, 2002, within the initial registration period for Salvadorans. On June 24, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001. The applicant failed to respond to the notice.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that he is a Salvadoran national who entered the United States before February 13, 2001. The applicant also submits a statement from his brother [REDACTED]. In addition, the applicant submits evidence regarding his entry into the United States. [REDACTED] stated that the applicant left the United States on May 16, 2001 for approximately two weeks. The applicant's passport indicates multiple entries into the United States including January 27, 2001; and May 16, 2001. CIS records indicate the applicant was detained upon his return to the United States on May 16, 2001, and he was subsequently released on May 30, 2001. According to statements made by the applicant, he entered the United States on January 27, 2001. He stated that his son was murdered in El Salvador and he returned to El Salvador on May 6, 2001 for the trial. According to the applicant, he attempted to reenter the United States at Atlanta, Georgia on May 16, 2001 where he was detained until he was paroled on May 30, 2001, and has lived in the United States ever since.

However, in a statement provided by the applicant when he was detained at the Hartsfield International Airport, Atlanta, Georgia on May 16, 2001, he stated he was only entering the country to visit his brother for a week and get a car and motorcycle he had left behind. In that statement, the applicant also indicated that his "current address" was in El Salvador and that he was employed there as a merchant. It is further noted that the only evidence presented by the applicant regarding his continuous residence and continuous physical presence in this country is an affidavit from his brother, [REDACTED]. The applicant's brother stated that the applicant came to the United States in 1999 and 2000. [REDACTED] also stated that the applicant left the United States, but since his return in January 2001, he has only left the United States because of the death of his son. These discrepancies have not been satisfactorily explained regarding his continuous residence and continuous physical presence. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.