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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



M

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **AUG 02 2004**

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:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 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, the applicant submits a statement and copies of documents previously submitted into the record.

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 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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.

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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 February 6, 2003, the applicant was requested to submit evidence of identity and evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant provided the following:

1. pay statements from [REDACTED] Farm Labor Contractor, for work performed on the following dates: December 9, 2000; January 13, 2001; February 3, 2001; March 5, 2001; March 17, 2001; April 21, 2001; May 5, 2001; June 22, 2001; July 14, 2001; August 25, 2001; and, September 8, 2001.
2. generic "phone call" message slips with the notations "1.20,00" and "448 L St., Mendota, California" dated: January 5, 2001; February 5, 2001; March 5, 2001; April 5, 2001; May 5, 2001; June 5, 2001; July 5, 2001; August 5, 2001; and, September 5, 2001; and,
3. a photocopy of the applicant's Salvadoran national identity document (cedula) bearing his photograph.

On April 21, 2003, the applicant was requested to submit pay statements from his place of employment covering the months of February 2001 through September 2002 and a certified employment letter from his employer on the employer's official letterhead stationery for the period from February 2001 through September 2002. The applicant was also requested to provide evidence of residence such as monthly utility bills. In response, the applicant submitted copies of the same documents provided in response to the prior Notice of Intent to Deny.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 4, 2003.

On appeal, the applicant states that he is submitting copies of work receipts from his employer [REDACTED] a farm labor contractor. The applicant once again submits copies of the same documents previously submitted in response to both Notices of Intent to Deny. The applicant failed to submit evidence of residence or an employment letter from his employer [REDACTED] as requested.

It appears that the generic "phone call" message slips are intended to represent cash receipts for monthly rent payments. In the absence of other evidence of residence, these documents are not sufficient to establish that the applicant ever resided at [REDACTED]. They are not signed by the owner of the property the applicant purportedly rented, and the applicant has not provided a copy of a rental agreement, a lease, utility bills, telephone bills, or any other evidence to establish his residence at that address.

Additionally, the applicant stated on the Form I-821 that he entered the United States on January 20, 2001. Two of the pay statements reflect work purportedly performed by the applicant on December 8, 2000 and January 13, 2001, respectively. Additionally, one of the "phone call" message slips appears to reflect rent paid by the applicant on January 5, 2001. The applicant has not provided any explanation as to how he could have paid rent in Mendota, California, on January 5, 2001, or how he could have been paid for farm labor he purportedly performed in the United States on December 8, 2000 and January 13, 2001, when he did not enter

the United States until January 20, 2001. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner 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. (Comm. 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 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 residence and 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.

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.