



U.S. Citizenship
and Immigration
Services



FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 17 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:



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

*Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy*

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (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 determined 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 United States since March 9, 2001.

On appeal, counsel for the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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 Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on April 9, 2001.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must submit all documentation as required in the instructions or requested by 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial Form I-821, the applicant submitted photocopies of the following documentation:

1. A letter, dated March 29, 2001, from [REDACTED] president of [REDACTED] Covering, Virginia Beach, Virginia, stating that, to the best of his knowledge, the applicant had been an assistant of [REDACTED] an independent flooring contractor, since July 2000;
2. His El Salvadoran national identity card (*Cedula de Identidad Personal*); and,
3. A "California 2000 Identification Card."

On June 17, 2003, the applicant was requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted photocopies of the following documentation:

4. A shipping receipt, dated June 26, 2001, issued to the applicant by the customer service department of an unspecified company in [REDACTED] Indiana. The applicant's address is noted as [REDACTED] Beach, Virginia;
5. Cancelled payroll checks issued to the applicant by [REDACTED] Alexandria, Virginia, on January 22, 2003, and February 20, 2003;
6. An uncanceled 5-day payroll check issued to the applicant by [REDACTED] Virginia, on June 26, 2003;
7. A receipt from the Social Security Administration, Arlington, Virginia, indicating that the applicant applied for a social security card on October 5, 2001; and,
8. Bank Statements from [REDACTED] the one month periods ending January 24, 2002, and March 22, 2002.

The director determined that the documentation provided by the applicant was not sufficient to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on August 8, 2003.

On appeal, counsel for the applicant states that the applicant has ample evidence of his physical presence in the United States during the requisite time period, and that the applicant worked as a carpet installer from January to April 2001. In support of the appeal, counsel submits photocopies of the following additional documentation:

9. A letter, dated September 3, 2003, from [REDACTED] (note difference in spelling of last name from Nos. 5 and 6, above), stating that he is the owner of Expert Carpet (at an unspecified address) and that the applicant worked for his company from January 2001 to April 2001;
10. A letter, dated August 20, 2003, from [REDACTED] Arlington, Virginia, stating that the applicant began wiring money to El Salvador from January 16, 2002;
11. An undated letter from [REDACTED] stating that the applicant removed and installed her carpet during two days in April 2001;

12. A bank statement from SunTrust, Richmond, Virginia, for the one-month period ending February 22, 2002;
13. An uncertified copy of a one-page 2001 Internal Revenue Service (IRS) Schedule C (Form 1040), indicating that the applicant earned gross receipts of \$6,980; and,
14. Hand-written rent receipts, issued in February, March, and April 2001; and March and April 2003. Additional receipts submitted do not have legible issuance dates.

The applicant claims to have continuously lived in the United States since July 26, 2000. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. However, No. 1, above, has little evidentiary weight or probative value as it does not provide the specific dates that the applicant was employed and the applicant's address at the time. Also, the affiant does not explain specifically how he had knowledge of the applicant's employment by a third party. Similarly, No. 11 does not provide the applicant's address at the time he provided services for the affiant. And, No. 9 does not provide either the applicant's address at the time of employment, or the address of the business that employed him. No. 13 is not a certified document, and does not include photocopies of the applicant's corresponding Form(s) W-4, Wage and Tax Statements. No. 14 includes only hand-written receipts, many of which have illegible dates.

Furthermore, there are discrepancies in the evidence presented pertaining to the name, address, and business of the applicant's alleged employer(s). It is not clear whether [REDACTED] (Nos. 5 and 6) is the same person as [REDACTED] (No. 9). No. 5 indicates [REDACTED] address, in January and February 2003, as Alexandria, Virginia; No. 6 indicates his address, in June 2003, as Falls Church, Virginia. No. 9 does not include the address of [REDACTED] business. It is also noted that while No. 1 indicates that the applicant was employed by [REDACTED] during January, February, and March 2001, No. 9 indicates that he was employed by [REDACTED] during that same period. These discrepancies call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted 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; any 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).

It is concluded 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.

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.