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

U.S. Citizenship and Immigration Services

M-1

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUL 21 2004

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 determined that the applicant failed to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant states that an affidavit the applicant had previously submitted contained a typographical error that the applicant did not detect because he was not able to read or write English well. Counsel submits additional evidence in support of the applicant's claim.

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 condition described in paragraph (f)(2) of 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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. 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).

The record reflects that the applicant submitted his application for TPS on May 25, 2001. The applicant stated that he entered the United States in 1994. In support of his application, the applicant submitted the following evidence:

1.) two envelopes, postmarked May 20, 1999, and May 21, 1999, addressed to the applicant at [redacted] Brentwood, New York; and,
2.) correspondence from Allstate Indemnity Company, pertaining to an accident on August 18, 1998, mailed to the applicant at [redacted] Brentwood, New York, during the period from May 1999 to September 1999.

In a notice of intent to deny the application, dated March 20, 2003, the applicant was requested to submit evidence to establish that he had continuously resided in the United States since February 9, 2001, and that he had been continuously physically present in the United States since March 9, 2001. In response, the applicant submitted the following evidence:

3.) a March 31, 2003 statement from President, Arodes Construction Corp., who states he met the applicant at the beginning of 2001, and that he has worked for his corporation as a carpenter since that time;
4.) an April 10, 2003 affidavit from who states the applicant has lived in his home a New York, since "the year 2000;" and,
5.) duplicate copies of the documentation listed in Item No. 2, above.

On June 2, 2003, the director concluded that the applicant had failed to establish his qualifying continuous residence and physical presence in the United States during the requisite period and denied the application.

On appeal, counsel states that the applicant inadvertently submitted an affidavit that contained a typographical error because he had limited English skills and he could not review the affidavit for accuracy. Counsel submits a June 14, 2003 affidavit in which the applicant states that he has lived at Brentwood, New York, since September 2001. Counsel claims that affidavit, discussed in Item No. 4, above, contained a typographical error, and that the affiant should have stated that the applicant had resided at the address provided from the year 2001, and not 2000. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The applicant did not submit any evidence from , acknowledging that an error had been made on his April 10, 2003 affidavit. The applicant did submit a change of address order, which he states was stamped by the postal service "with a date of September 2001 in the lower left hand corner;" however, there is no visible date on the forwarding order the applicant provided. While counsel maintains the applicant was residing at Brentwood, New York, until September 2001, no evidence of this assertion is included in the record. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence as to the applicant's residence, it cannot be determined when or for how long the applicant resided at Brentwood, New York.

The employment affidavit from has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the exact date the applicant began his employment, but merely stated that he met the applicant at the beginning of the year 2001, and that he has worked for his corporation since that time. Moreover, the applicant has not provided any contemporaneous evidence of his employment, such as copies of paychecks or pay statements.

The remainder of the evidence the applicant provided, discussed in Item Nos. 1, 2 and 5, above, is dated 1999 and, therefore, does not establish that the applicant has continuously resided in the United States since February 9, 2001, and that he was physically present in the United States from March 9, 2001, through the date of filing of the TPS application. The applicant claims to have continuously resided in the United States

during the requisite period. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

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 failed to submit any objective evidence to explain or justify the inconsistent information he provided as to his residence address. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he has met 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.

The burden of proof is upon the applicant to establish 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.