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U.S. Citizenship  
and Immigration  
Services

MI



NOV 17 2004

FILE:



Office: VERMONT SERVICE CENTER

Date:

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 residence and his continuous physical presence in the United States during the requisite periods. The director also found that the applicant had not established his nationality.

On appeal, the applicant submits copies of documentation previously submitted.

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 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 first issue raised by the director to be addressed in this proceeding is whether the applicant has established his nationality.

In a notice of intent to deny, dated July 1, 2003, the applicant was requested to submit evidence to show that he is a citizen or national of El Salvador. The applicant was advised that such evidence might include a copy of the biographical pages of his passport that provides his photograph, his name, date, and place of birth; a copy of his birth certificate showing timely registration, date and place of birth, and parent's names; or, a copy of his National Identification Card. The applicant was also requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The applicant submitted a response on July 14, 2002; however, the applicant failed to provide any evidence to establish his nationality.

The director found that the applicant failed to establish his nationality. The director denied the application on October 28, 2003.

On appeal, the applicant provided no documentary evidence to establish his nationality. Therefore, the director's decision to deny the application for TPS on this ground will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence and his continuous physical presence in the United States during the required timeframes.

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. 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 record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on April 29, 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 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).

As previously stated in the above-mentioned notice of intent to deny, the applicant was requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. In response, the applicant submitted a letter, dated July 11, 2003, from his church, which states that the applicant has been a member of The Church of God of Prophecy in Sterling, Virginia since November 2000; and, an undated letter from the general manager of Bistro Bistro, who states that the applicant has been employed at Bistro Bistro since January 2000.

The director found that the evidence submitted was not sufficient in establishing the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, and denied the application on October 28, 2003.

On appeal, the applicant again provides the above-mentioned letters from The Church of God of Prophecy and Bistro Bistro. The applicant has provided no new evidence to establish his continuous residence and his continuous physical presence in the United States during the required timeframes. The employment letter from [REDACTED] without supporting documentary evidence such as employment records, is not sufficient for meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the letter from the applicant's church merely states that he has been a member since November 2000, but provides no information as to whether the applicant attends services on a regular basis and participates in any church activities. The applicant has failed to establish that he has met the

criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds 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.