



U.S. Citizenship
and Immigration
Services

M

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

SEP 27 2014

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: 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

PROBABLE - 7/14/14

Identifying data deleted to
prevent identity compromise and
invasion of personal privacy

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 denied the application because the applicant failed to establish his continuous residence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and additional evidence. It is noted that the record contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from [REDACTED] of the Immigration Community Services in Brentwood, New York. However, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster does not list either Norma Aguilar or the Immigration Community Services in Brentwood, New York as recognized entities, nor has Norma Aguilar established that she meets the criteria for representation under 8 C.F. R. § 292. Consequently, the applicant will be considered self-represented.

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 issue to be addressed in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001.

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 the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 3, 2001.

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).

In a notice of intent to deny, dated April 21, 2003, 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.

The director determined that an affidavit submitted by the applicant "satisfies that you were physically present in the United States, [sic] since March 9, 2001 to the date of filing." However, the director determined that the evidence submitted failed to establish that the applicant has continuously resided in the United States since February 13, 2001." The director denied the application on June 26, 2003.

On appeal, the applicant submits a letter dated July 22, 2003, from [REDACTED] which states that the applicant "has worked for my business known as Paradise Diner for 3 yrs," but no longer is employed there. The applicant also provided a letter, dated July 22, 2003, from [REDACTED] who states that he has known the applicant for many years, and that the applicant has been his co-worker in the United States since January 2001.

The additional evidence submitted on appeal is not sufficient credible evidence to demonstrate that the applicant has been continuously residing in the United States since February 13, 2001. Without supporting documentary evidence such as pay records for the three years [REDACTED] claims the applicant worked for the Paradise [REDACTED] letter is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I & N Dec. 190 (Reg. Comm. 1972). It is noted that the record does contain pay records for the applicant from Paradise Diner for December 3, 2001 and December 17, 2001. It has not been explained as to why the remaining pay records for the three years the beneficiary was to have worked for the diner have not been supplied. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

Beyond the decision of the director, the director erred in stating that the applicant provided sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001, to the date of the filing of the TPS application. None of the evidence contained in the record and submitted on appeal establishes that the applicant was continuously physically present in the United States during the requisite timeframe. As stated above, the record merely contains two pay statements for December 2001, and affidavits with no supporting documentary evidence. Therefore, the application must also be denied for this reason.

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.