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

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**U.S. Citizenship
and Immigration
Services**



FILE:

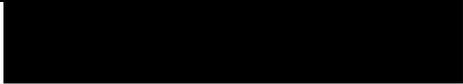


Office: VERMONT SERVICE CENTER

Date: **SEP 28 2004**

IN RE:

Applicant:

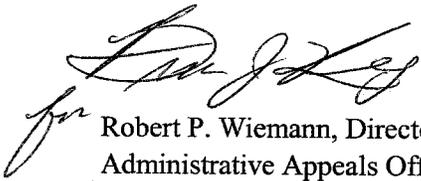


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 applying for 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 that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001.

An appeal was filed on May 20, 2003, by [REDACTED] of Immigration and Translation Consultants, Bay Shore, New York. However, the U.S. Department of Justice, Executive Office for Immigration Review, Recognition and Accreditation Roster does not list either [REDACTED] or Immigration and Translation Consultants, Bay Shore, New York as recognized entities, nor has [REDACTED] established that he meets the criteria for representation under 8 C.F. R. § 292. Consequently, as the applicant has signed the Form, I-290B, Notice of Appeal to the Administrative Appeals Unit (AAU), the applicant will be considered as self-represented.

On appeal, the applicant provides a brief statement.

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 issues raised by the director that will be addressed in this proceeding are whether the applicant has been continuously residing in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 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 September 12, 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 the TPS application, dated February 26, 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. In response, the applicant submitted photocopies of his passport, a birth certificate translation, and the first page of his Internal Revenue Service Form 1040A, U.S. Individual Income Tax Return, for 2001. The applicant also provided a photocopy of his Wage and Tax Statement (W-2) for 2001.

The director determined that the evidence submitted was not sufficient to establish the applicant's continuous residence and his continuous physical presence in the United States during the required timeframes. The director denied the application on April 24, 2003.

On appeal, the applicant states that he needs 15 more days to get an "employer letter." The applicant also states that he has "asked before and no letter until today." The applicant provided no other documentary evidence in support of the appeal. It is noted that the record contains a letter dated May 24, 2003, from the director of Nicolock Paving Stones, N.E., which states that the applicant has been a full-time employee of theirs since August 1, 2000. In addition, the record contains Form W-2, Wage and Tax Statement, for the year 2001, from [REDACTED] Products, which shows the applicant's wages, tips, and other compensation for that year as \$13,290.00. The letter from [REDACTED] N.W. has no address and telephone number for the company, therefore, its existence and whereabouts cannot be verified. In addition, the above-mentioned W-2 indicates that the applicant was working for Nicolia Concrete during the same time he was supposedly employed full-time by [REDACTED] N.E. These discrepancies have not been explained. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) 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 visa petition. *Id.*, 582, 591.

The applicant has provided no additional evidence on appeal to demonstrate that he has been continuously residing in the United States since February 13, 2001, and that he has been continuously physically present in the

United States since March 9, 2001. The applicant has, therefore, 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.