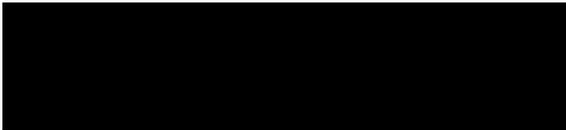


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FILE: [REDACTED]
[EAC 02 142 50641]

Office: Vermont Service Center

Date: AUG 09 2005

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:



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 denied the application because the applicant failed to establish his continuous residence in the United States since February 13, 2001.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support his claim.

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.

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. 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 September 9, 2006, 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).

On July 2, 2003, the director denied the application due to abandonment because the applicant failed to respond to a request for additional evidence. On August 2, 2003, counsel, on behalf of the applicant, filed a motion to reopen the application. The director approved the motion and requested additional documentation on January 15, 2004. The applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001. In response, the applicant submitted some evidence in an attempt to establish his continuous residence in the United States during the requisite time periods. The director, however, determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 8, 2004. It is noted that the director stated incorrectly that the applicant had filed the TPS application on March 15, 2004. The correct date for the filing of the application is March 15, 2002.

On April 29, 2004, counsel filed an appeal which is now before the AAO. On appeal, counsel states that the director erred in denying the application. Counsel also states that the record will show the applicant is prima facie eligible for TPS. In addition, counsel provides the following documentation on appeal: copies of the applicant's New York State Identification Card and Driver License issued on February 13, 2003 and June 23, 2003, respectively; an employment letter from [REDACTED] Office Manager of Wade Associates, Inc, who stated that the applicant has been employed with them since May 24, 2002; a copy of an affidavit dated April 24, 2004, from [REDACTED] who stated that he has known the applicant since January 2001; a copy of an affidavit dated February 12, 2004, from [REDACTED] who stated that that applicant had rented a room from him since February 2, 2001; a copy of a hand-written receipt from Arguetas Express in North Bay Shore, New York bearing an illegible date; copies of the applicant's IRS Form W-2, Wage and Tax Statements, for the years 2002 and 2003; a copy of the applicant's U.S. Individual Income Tax returns for the years 2002 and 2003; a copy of the applicant's Form 1099-G for the year 2003; a copy of a single hand-written rent receipt dated February 1, 2001; a copy of a Letter of Good Moral Conduct Reference dated February 26, 2002, from [REDACTED] who stated that he has known the applicant since January 1, 2001; and a copy of a Letter of Good Moral Conduct Reference dated February 26, 2002, from [REDACTED] who stated that she has known the applicant since January 28, 2001.

The statements provided by [REDACTED] indicate that they have known the applicant since January 2001; however, they do not indicate whether such acquaintance was in the United States. Additionally, the date indicated by [REDACTED] in her statement appears to have been altered. Also, the affidavit from [REDACTED] does not indicate the applicant's address during their acquaintance, which was stated to be January 2001. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. In addition, [REDACTED] stated that the applicant had rented a room from him since February 2, 2001, at [REDACTED] in Wyandanch, New York at that time. However, the applicant claimed on his TPS application filed on March 15, 2002, that he resided at [REDACTED] Wyandanch, New York. In addition, the Service received a letter dated July 27, 2002, from the applicant indicating his new address [REDACTED] Wyandanch, New York. This raises questions of credibility. 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 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 discrepancies noted above. Also, the hand-written receipt from Arguetas Express contains an illegible date,

and thus, provides little, if any, evidentiary weight. The employment letter from Wade Associates, Inc. and the copies of the applicant's tax documents for the years 2002 and 2003 post-date the beginning of the requisite time periods for El Salvadoran TPS. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined 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 on these grounds will be affirmed.

An alien applying for TPS 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.