



U.S. Citizenship
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Services

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MM

FILE: [REDACTED]
[EAC 03 054 50479]

Office: VERMONT SERVICE CENTER

Date: **AUG 15 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 he had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel states the applicant is submitting signed and notarized affidavits of people that can testify that he has been in the country since February 2001 and has not left since. Counsel forwards a copy of the applicant's Virginia Identification Card, two affidavits and an employment verification letter for consideration.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. An extension of the TPS designation has been granted 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).

Upon initial submission, the applicant submitted:

1. An affidavit from [REDACTED] dated September 4, 2002 certifying that the applicant rented a room in his home from January 2001.
2. An affidavit from [REDACTED] dated September 4, 2002 certifying that he knew the applicant since January 2001 and attesting to his character.

On February 9, 2004, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. A copy of a letter dated February 26, 2004 from [REDACTED] the General Manager of Nathans Restaurant in Georgetown, Washington, DC who states that the applicant has been employed as "casual labor" and as a full time employee for the last

three and one-half years. The general manager further states that he began his employment in early 2001 and that he is currently a full time kitchen staff member.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 20, 2004.

On appeal, counsel submits the following:

4. A copy of a Virginia Identification Card issued to the applicant on April 24, 2001.
5. A second affidavit from [REDACTED] dated May 5, 2004 indicating that he is married to the applicant's sister and that he has known [REDACTED] since 2001.
6. An affidavit from [REDACTED] dated May 5, 2004 indicating that the applicant was her sister's roommate and that she has known him since 2001.

In this case, the statement provided by [REDACTED] is not supported by corroborative evidence such as rental receipts. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support Mr. [REDACTED] assertions; however, no corroborative evidence has been provided. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. In addition, the employment letter from Mr. [REDACTED] 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 letter is not in affidavit form and is not signed and attested to by the employer under perjury. Additionally, Mr. [REDACTED] does not provide the address where the applicant resided during the period of his employment. 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).

It is determined that the applicant has not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to April 24, 2001, the date his Virginia Identification Card was issued. He has, thereby, 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 will be affirmed.

Beyond the decision of the director, the initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed his initial application with CIS, on September 10, 2002.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

The applicant has submitted evidence in an attempt to establish his qualifying continuous residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The record reflects no evidence

to show that he has met the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the application is denied for this additional reason.

Finally, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this yet another reason.

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.