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FILE:



Office: VERMONT SERVICE CENTER

Date:

AUG 30 2005

[EAC 01 210 50384]

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:



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 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.

On appeal, the applicant provides a brief statement and additional documentation.

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 to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence 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 September 9, 2006, 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 June 19, 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 action, dated October 16, 2002, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes. In response the applicant provided one "statement," dated November 11, 2002, from [REDACTED] M.D., F.A.A.P., who states that the applicant "visits my office regularly. He was seen because of sickness in [sic] many occasions during the year 2001."

The director found that the statement presented, in response to the notice of intent to deny, was not sufficient in establishing the applicant's continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director denied the application on April 4, 2003.

On appeal, the applicant states that he entered the United States in February of 1999. The applicant also states that his mother, who was already in the United States, provided him with shelter, food, transportation, and "everything that I needed to survive in this country." The applicant submits: a copy of a letter, dated August 22, 2003, from [REDACTED] who states that he has know the applicant since November of 2000; a copy of a note from [REDACTED] M.D, F.A.A.P., who states that the applicant "has been seen in my office regularly. He was on 3 occasions in year 2001;" two copies of Form W-2, Wage and Tax Statement, for the year 2001, showing wages and tips as \$1, 794.72; and a copy of the first page of Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, for the year 2001.

None of the documentation presented on appeal is sufficient in demonstrating 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. The applicant provided no documentary evidence to demonstrate his day-to-day living in the United States from the onset of the qualifying timeframes to the filing date of his TPS application. The tax form has not been signed and dated by the applicant and also has not been certified by the Internal Revenue Service and, therefore, carries little weight in this proceeding. Further, the note from Dr. [REDACTED] states that the applicant has been seen in his office on a regular basis, but further states that the applicant was only in his office on three occasions in 2001. Three visits to the doctor's office cannot be considered as being seen on a regular basis, and as the doctor failed to provide the dates he saw the applicant, it is not known if these visits were during the qualifying timeframes (February 13, 2001 to the filing date of the applicant's TPS application). In addition, the doctor's statement of November 13, 2002, states that the applicant was seen in the his office "in [sic] many occasions during the year 2001." There is a substantial difference between seeing someone three times and seeing them on many occasions. These statements contradict one another and cannot be considered credible. 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 application.

Id., 582, 591. Finally, the W-2 forms, without additional supporting documentary evidence such as employment records, and earnings statements, are 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).

The record contains insufficient credible evidence to demonstrate that the applicant has continuously resided 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 failed to provide sufficient evidence 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.