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FILE:

[REDACTED]
[EAC 03 011 53377]

Office: VERMONT SERVICE CENTER

Date: **DEC 27 2005**

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. An appeal was treated as a Motion to Reopen and was denied again by the Director, Vermont Service Center. The applicant appealed the director's decision on the motion and it 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 initially determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On motion, the applicant stated that he needs his employment card to work and support his family. The applicant also submits additional evidence, and resubmits evidence previously provided, in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The director determined that the applicant had not overcome the basis of the denial and denied the application again.

On appeal, the applicant states that he has submitted documentation that shows he has been present in the United States since on or before February 13, 2001.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 Salvador must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite 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).

The record shows that the applicant filed his TPS application on August 3, 2002. On October 31, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

1. Copies of statements from [REDACTED] the pastor of [REDACTED] Somerville, Massachusetts; and, [REDACTED] Pastor, [REDACTED], East Boston, Massachusetts.
2. Copies of pay stubs from [REDACTED], N. [REDACTED] Massachusetts dated May 28, 2003, June 11, 2003, June 25, 2003, July 9, 2003, July 23, 2003, August 6, 2003, August 20, 2003, September 3, 2003, September 17, 2003, October

1, 2003, October 15, 2003, October 29, 2003, November 12, 2003, and November 26, 2003.

3. Copies of Gigante Express money transfer receipts dated January 24, 2003, April 4, 2003, June 25, 2003, and August 9, 2003.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On motion, the applicant states that he entered the United States before January 13, 2001 and he is submitting evidence to support this claim. The applicant submits statements from [REDACTED] and [REDACTED]. The applicant also submits a copy of his passport. The applicant also resubmits evidence previously provided.

The director determined that the applicant had not overcome the basis for the denial and denied the application again.

On appeal, the applicant states that he has submitted documentation to establish that he has been physically present in the United States since on or before February 13, 2001. According to the applicant, he cannot submit any other documentation.

[REDACTED] claim that they have known the applicant since December 2000. [REDACTED], and [REDACTED] state that they have known the applicant since January 2001. However, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

The letter from the pastor of [REDACTED] contains an illegible signature, but the evidence stated that the applicant entered the United States in December 2000, and has been a faithful member of the church. Pastor [REDACTED] stated that the applicant has been a member of his parish since December 2000. However, these statements have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastors do not explain the origin of the information to which they attest, nor do they provide the address where the applicant resided during the period of his involvement with the churches. Furthermore, the statements appear to offer conflicting information, with each claiming the applicant's membership at their respective churches during the same period. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The remaining evidence is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant provided a photocopy of his passport in an attempt to establish his nationality and his identification. However, the passport was signed by the applicant and issued in El Salvador on May 3, 2001. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the operable timeframe.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.