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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date FEB 02 2005

[EAC 02 285 52589]

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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 that he had continuously resided in the United States since February 13, 2001.

On appeal, applicant the applicant submits a letter and additional documentation.

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.
- (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 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS), on September 6, 2002.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial Form I-821, the applicant submitted:

1. A photocopy of an extract of his birth certificate, with English translation, indicating that it was issued in El Salvador on October 30, 2001;
2. A letter from [REDACTED] the manager of [REDACTED] dated July 23, 2002, stating that she has known the applicant since March 2001 and would like to employ him; and,
3. A photocopy of a Western Union money transfer application form, with a handwritten date of February 25, 2001.

On April 10, 2003, the applicant was requested to submit additional documentation as evidence of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

4. A letter from [REDACTED] of [REDACTED], Paterson, New Jersey, dated May 5, 2003, stating that the applicant and friends are tenants at a property located at [REDACTED] New Jersey.
5. A letter from [REDACTED] dated May 2, 2003, stating that the applicant has been employed since September 2002 as a landscaper;
6. A photocopy of a Sprint invoice, dated November 13, 2002;
7. A photocopy of a two-page document, listing the applicant's pay from November 1, 2002 through December 20, 2002; and,
8. Photocopies of Western Union money transfer application forms, with handwritten dates of March 5, 2001; April 1, 2001; and, February 27, 2002.

The director determined that the documentation provided was not sufficient to establish the applicant's qualifying continuous residence in the United States and denied the application on June 30, 2003.

On appeal, the applicant states that he has submitted employment letters and rent receipts in compliance with the regulations. In support of the appeal, the applicant also submits:

9. A letter from [REDACTED] Waldwick, New Jersey, dated July 27, 2003, stating that the applicant rented a room in his home from February 1, 2001 "for about one year and a half;"
10. A letter from [REDACTED] dated July 30, 2003, stating that the applicant has been employed by her as an independent landscaper once a month since 2001; and,
11. A photocopy of a Western Union money transfer application form, with a handwritten date of January 25, 2001.

The applicant claims to have lived in the United States since January 31, 2001. It is reasonable to expect that he would have a variety of credible contemporaneous evidence to support this claim.

Nos. 3, 8, and 11, above are merely customer copies of application forms containing hand-written dates. They do not have control numbers and cannot be considered as official receipts for money transfers.

The employment letters, Nos. 5 and 10, 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)(i). Specifically, they are not in the form of affidavits and do not provide required information, such as the address where the applicant resided during the period of his employment, and the period(s) of layoff (if any).

Nos. 6 and 7 are dated well after the dates required to establish TPS eligibility. Furthermore, No. 7 is merely an unofficial listing of the applicant's income.

No. 2, a letter from an acquaintance and prospective employer, does not constitute persuasive evidence of qualifying continuous residence and continuous physical presence. Nos. 4 and 9 do not contain specific dates and are un-supported by corroborative evidence. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

No. 1 was issued after the date of the applicant's claimed entry into the United States. This discrepancy has not been explained satisfactorily and calls into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the applicant's claim. It is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence requirement described in 8 C.F.R. §§ 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish that he has been continuously physically present in the United States since March 9, 2001. Therefore, application may also not be approved for this reason.

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.