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

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FILE:

[EAC 02 030 53162]

Office: Vermont Service Center

Date: JUN 10 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:

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 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, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application.

On appeal, the applicant submits additional evidence in support of his claim of eligibility for TPS.

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 April 23, 2003, the applicant was requested to submit evidence to establish his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The director also noted in his request that some of the evidence (i.e., the Western Union receipts) submitted by the applicant in support of his eligibility appeared to be fraudulent, and, therefore, the director requested an explanation and the original documentation. In addition, the director also requested the applicant to submit evidence that he had timely re-registered for TPS. Subsequently, the director denied the application on June 25, 2003, due to abandonment, because it was determined that the record did not contain a response from the applicant. It is noted that the applicant responded to the director's April 23, 2003 request on June 11, 2003, before the director's decision to deny his application.

The applicant filed a motion to reopen on July 22, 2003, and claimed that he had submitted the requested documentation. The director granted the motion to reopen and rendered a decision on the merits of the case. After a complete review of the record of proceedings, the director determined that the applicant had failed to establish his eligibility for TPS. The director, therefore, denied the application on October 7, 2003. The director noted in her decision that the documentation submitted along with the motion was either illegible, unreliable, or did not cover the pertinent time periods. The director also noted in her decision that the applicant failed to provide original documentation as requested.

On November 6, 2003, the applicant filed an appeal to the director's October 7, 2003 decision, which is now before the AAO.

On appeal, the applicant, through counsel, states that he never received any notice to submit evidence in support of his application and that the initial evidence was submitted with his original application. The applicant, on appeal, also provides documentation that he previously submitted to the Service in support of his continuous residence and continuous physical presence in the United States during the requisite time periods.

A review of the record of proceedings reflects that the applicant had responded to the director's August 23, 2003 request for evidence on June 11, 2003. The director considered the applicant's documentation in her decision to deny the application on October 7, 2003. As noted above, the applicant, however, did not provide the original documentation as requested, and the evidence submitted was either illegible, unreliable, or did not cover the requisite time periods; thus, the director denied the application.

A review of the evidence in the record of proceedings reflects that the applicant did not submit the requested original documentation. Further, the applicant has not provided an explanation regarding the noted discrepancies in the Western Union receipts submitted on June 11, 2003.

Furthermore, the record contains photocopied money transfer receipts from Prontos Enivos dated "1/25/2001" and "11/25/2001", bearing the same receipt number of [REDACTED]. It appears that the original date on the "11/25/2001" receipt had been altered to reflect an earlier date of "1/25/2001". It is also noted that the date on the Prontos Enivos money transfer receipt [REDACTED] appears to be altered as well. 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 apparent alteration of the receipts as noted above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy 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.