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U.S. Citizenship
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Services

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MM

[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date:

JUN 21 2005

[EAC 02 253 21019]

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:

[REDACTED]

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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits documentation in support of his claim.

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 July 7, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The director also requested the applicant to submit the original documents from the Nassau Health Care Corporation stating that he attended the Hempstead Health Center from November 27, 1999 to March 17, 2001. The applicant was also requested to submit the original employment letter from Logozzo Bros. Construction Corp. including his tax information, such as IRS Forms W-2, and pay stubs from the years 2000 to 2002. In response, the applicant submitted an affidavit dated August 3, 2002, from Mr. [REDACTED] an affidavit dated July 28, 2003, from Ms. [REDACTED] and a Western Union money transfer dated August 3, 2002, in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods for TPS. The director, therefore, denied the application on August 22, 2003.

On appeal, counsel, states the applicant is unable to provide employment records, rent or medical receipts, bank account statements or insurance documents because the applicant gets paid in cash, does not have any medical problems requiring medical services, bank accounts, or insurance. In addition, counsel submits copies of the same affidavits and Western Union money transfer receipt already submitted by the applicant in response to the director's July 7, 2003 request. Further, counsel argues that the applicant has submitted sufficient evidence to establish his eligibility for TPS.

A review of the record of proceedings reflects that the applicant submitted, along with his application for TPS, a letter dated July 25, 2003, from the Hempstead Health Care Center in Hempstead, New York, and an employment letter dated July 20, 2002, from Logozzo Bros. Construction Corp., in Brooklyn, New York. The applicant failed to comply with the director's request to submit to original documents as well as tax information or pay stubs from his employment. In addition, counsel argues that the applicant does not have any medical problems; however, counsel's statement is unfounded since the applicant has already submitted a letter indicating that he has been seen by the Hempstead Health Center. Further, counsel states that the applicant gets paid in cash; however, the applicant has not provided any letter to that effect from his employer.

The statements provided by the affiants Mr. [REDACTED] and Ms. [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no credible corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence in the United States. Mr. [REDACTED] indicates that he has known the applicant for two years; however, he did not specify where the applicant lived during the time of their acquaintance. The applicant claims to have lived in the United States since March 15, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his continuous residence and continuous physical presence during the requisite time periods.

The letters from the Hempstead Health Center and Logozzo Bros. Construction Corp. are not notarized nor in affidavit form. It is also noted that these letters do not contain original signatures. In addition, these letters appear to have been altered as the original name and dates seem to have been covered-over and the applicant's name and

earlier dates have been inserted in their place. 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 alterations. 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 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.