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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 03 018 50658]

Office: VERMONT SERVICE CENTER

Date:

JUN 24 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.

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 claims to be 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 time periods.

On appeal, 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.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 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 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 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 TPS application, filed on September 9, 2002, the applicant submitted:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A photocopy of an un-translated document; and,
3. A letter, dated September 4, 2002, from [REDACTED] Bay Shore, New York, stating that he has known the applicant for about two years;

On May 29, 2003, the applicant was requested to submit evidence establishing 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, dated June 20, 2003, from [REDACTED], Central Islip, New York, stating that the applicant rented a room in her home from August 2000 to May 2003; and,
5. An undated letter from [REDACTED] Brentwood, New York, stating that the applicant had been employed by him since August 2000.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on August 15, 2003.

On appeal, the applicant submits a letter, dated September 5, 2003, stating that since his arrival in the United States on January 10, 2001, he has never visited the hospital, obtained health insurance, owned a car, or opened a bank account. In support of his appeal, the applicant submits the following additional documentation:

6. An un-translated document;
7. Documentation indicating that he traveled on February 13, 1999, from Dallas, Texas, through Denver, Colorado, to Los Angeles, California;
8. Photocopies of earnings statements from Apple Food Service, for the one-week pay periods ending August 23, 1999; September 12, 1999; and, October 10, 1999. The statements indicate that the applicant used social security number [REDACTED] and that his filing status was married with five dependents;
9. A photocopy of a 1998 Internal Revenue Service (IRS) Form 1099-Misc issued by George Hull, Inc., Arlington, Texas; and,
10. A photocopy of a Western Union Money Transfer receipt, dated July 1, 2002.

The applicant claims to have continuously lived in the United States from July 23, 2000, to the date of filing his application on September 9, 2002. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim.

No. 1, above, relates to the applicant's claim of Salvadoran nationality. However, it is noted that the applicant failed to provide any identification document bearing his photograph or fingerprint. Nos. 2 and 6 are un-translated documents and, therefore, may not be considered in the rendering of this decision.¹ The letter from an acquaintance (No. 3) is not, by itself, persuasive evidence of continuous residence and continuous physical presence. No. 9 is dated well prior to the dates required to establish qualifying continuous residence and continuous physical presence.

¹ Any document containing a foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3).

The employment letter (No. 5, above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's duties with the company. Furthermore, it is not supported by any corroborative documentation, such as pay stubs and company employment records. Similarly, No. 4 has little evidentiary weight or probative value as it is not supported by objective evidence, such as rent receipts and/or a lease agreement.

It is further noted that there are discrepancies encountered in the evidence provided by the applicant concerning his marital status and use of a Social Security number. At the time of filing his TPS application in September 2002, the applicant indicated that he was single and had never used a Social Security number. However, the information contained in No. 8, above, indicates that the applicant claimed to be married and used Social Security number [REDACTED] from August 1999 through October 1999. These discrepancies have not been explained and call 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 application. 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).

The only remaining documents provided by the applicant are Nos. 7 and 10, above, which indicate the applicant's actual physical presence in the United States on two dates: February 13, 1999, and July 1, 2002.

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies 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.

Beyond the decision of the director, the applicant has not submitted an identity document bearing his photograph and/or fingerprint, as require under the provisions of 8 C.F.R. § 299.9(a)(1)(ii) and (iii). The 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.