



U.S. Citizenship
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FILE: [REDACTED]
[EAC 02 279 51003]

Office: VERMONT SERVICE CENTER

Date: JUN 24 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 time periods.

On appeal, the applicant submits a brief statement and an additional document.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, neither the individual nor the organization named are authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.

On March 9, 2001, the Attorney General designated El Salvador (66 Federal Register 14214) for Temporary Protected Status (TPS). 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 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.

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 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).

The applicant properly filed his initial Form I-821, Application for Temporary Protected Status, on September 3, 2002. On the application, the applicant stated that he had last entered the United States in June 2000. In support of the application, the applicant submitted:

1. A photocopy of his El Salvadoran birth certificate with English translation;
2. A letter, dated August 23, 2002, from [REDACTED] identified as the president of the [REDACTED] Landscape Company, Inc., Trenton, New Jersey, stating that the applicant had been employed since August 2000; and,
3. A letter, dated August 29, 2002, from [REDACTED] stating that the applicant had been living in Trenton, New Jersey, since October 2000.

On August 13, 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 second letter (see No. 2, above), dated August 23, 2003, from [REDACTED] stating that the applicant had been employed by his company 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 October 1, 2003.

On appeal, the applicant requests that his case be reviewed. In support of his appeal, the applicant submits the following additional document:

5. A third letter (see Nos. 2 and 4, above), dated October 17, 2003, from [REDACTED] stating that the applicant had been employed by his company as a crew member in lawn maintenance since August 2000;
6. A photocopy of a House Lease for the period March 1, 2001 to February 28, 2002, issued to tenants [REDACTED]. The applicant is listed on the document as a brother of the tenants and a person who will live in the house.

The applicant claims to have continuously lived in the United States from June 2000, to the date of filing his TPS application on September 3, 2002. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. The employment letters (Nos. 2, 4, and 5, above) 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 the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any). Furthermore, the letters are not supported by objective evidence such as pay stubs or company employment records. No. 4, apparently from the applicant's brother, is not, by itself, persuasive evidence of qualifying continuous residence and continuous physical presence. Similarly, No. 6 has little evidentiary value as the lease is not signed by the applicant.

It is noted that there are several discrepancies encountered in the information provided by the applicant on his TPS application, as opposed to evidence contained in CIS records. On his initial Form I-821, the applicant indicated that he had last entered the United States in June 2000, had never been placed under immigration proceedings, did not have an alien registration number, and had never used an alias. However, CIS records reflect that the applicant was physically removed from the United States on November 6, 2000, after having been encountered attempting to enter the United States at John E. Kennedy International Airport in Jamaica, New York, using a Guatemalan passport in the name of [REDACTED] (Alien registration file number [REDACTED] plates, consolidated into the current file number [REDACTED]). These discrepancies in the applicant's submission 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 applicant. Further, 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).

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 required 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.