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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 24 2005

[EAC 02 263 53130]

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.

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

On appeal, counsel for the applicant submits a statement 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.

On March 9, 2001, the Attorney General designated El Salvador (66 FR 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 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.

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 August 14, 2002, the applicant submitted:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A photocopy of the identification page from his El Salvadoran passport;
3. A photocopy of a letter, dated July 28, 2002, from [REDACTED] stating that she has known the applicant for about two years; and,
4. A photocopy of a letter, dated July 22, 2002, signed by the secretary and pastor of the Iglesia Pentecostal Getsemani, Hempstead, New York, stating that the applicant had been a congregant at the church for two years.

On March 12, 2003, the director requested the applicant to submit evidence establishing his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. In response, the applicant submitted:

5. An affidavit, dated March 31, 2003, from [REDACTED] stating that the applicant had been a tenant since March 2001 (it is noted that this date appears to have been altered);
6. An affidavit, dated March 31, 2003, from [REDACTED] stating that the applicant had been employed by Campos Landscaping, Freeport, New York, since August 2002;
7. An affidavit, dated March 31, 2003, from [REDACTED] stating that he has known the applicant since 2001;
8. A photocopy of a receipt, dated February 14, 2003, from RadioShack, Hempstead, New York;
9. A photocopy of a Sprint PCS statement, dated March 16, 2003; and,
10. A photocopy of a Greyhound Lines, Inc., receipt and itinerary, dated February 15, 2003.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on May 2, 2003. Counsel for the applicant apparently thought that the director's denial related to an application for annual re-registration that the applicant had attempted to file, because on June 23, 2003, counsel submitted a "Motion To Reopen/Reconsider Late Temporary Protected Status Re-Registration Application." In connection with the motion, counsel submitted the following:

11. An affidavit, dated May 19, 2003, from [REDACTED] stating that he had known the applicant since February 11, 2001;
12. An affidavit, dated May 23, 2003, from [REDACTED] stating that she had known the applicant since February 11, 2001.

Apparently based on the submission of this additional documentation, the director reopened his denial of the applicant's initial TPS application. The director then issued a second denial of the applicant's initial TPS application on December 1, 2003. The applicant has now filed an appeal of that decision.

On appeal, counsel asserts that the applicant should have been afforded an opportunity to submit additional evidence in support of his motion prior to the issuance of the director's second denial of the application. Counsel further asserts that the applicant has not been given a reasonable opportunity to pursue TPS benefits. Counsel requests that, if additional documentation is required, the applicant be given the opportunity to provide such documentation. In support of the appeal, counsel submits a statement from the applicant, reiterating counsel's assertions, and provides the following additional documentation:

13. A photocopy of the applicant's 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Tax Return, showing a business income of \$5,000. The applicant's social security number on the form is listed as [REDACTED]

Counsel's assertions on appeal are not persuasive. A review of the record reveals that the applicant has been afforded numerous opportunities to provide evidence to establish his TPS eligibility: at the time of filing his initial application, in response to the director's request for evidence, on submission of his motion to reopen the rejection of his application for annual re-registration, and on appeal.

The applicant claims to have lived continuously in the United States since February 11, 2001. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Letters from acquaintances (Nos. 3, 7, 11, and 12) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. No. 5 must be rejected as evidence because the document appears to have been altered, and is not supported by objective evidence such as rent receipts or a lease agreement. Furthermore, much of the documentation submitted by the applicant (Nos. 6, 8, 9, and 10) is dated well beyond the dates required to establish qualifying continuous residence and continuous physical presence.

There are discrepancies noted in the documentation submitted concerning Nos. 4 and 13, above. First, although the applicant claims to have entered the United States on February 11, 2001, the information attested to in No. 4 claims that the applicant had been a member of the church since on or about July 2000. Second, the applicant indicated at the time of filing his initial TPS application that he had never before used a Social Security number; however, No 13 indicates that he had used Social Security number [REDACTED] approximately eight months prior to the filing of that application. 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).

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.

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.