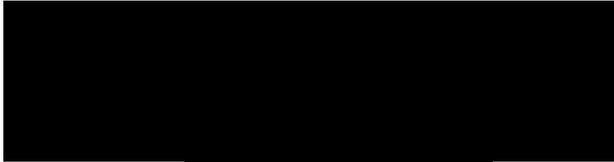


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FILE:



Office: Vermont Service Center

Date: JUN 28 2005

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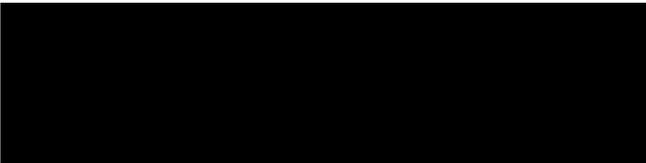
Applicant:



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 qualifying 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 May 8, 2003, the applicant was requested to submit evidence establishing his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant submitted some evidence in an attempt to establish his continuous physical presence and continuous residence in the United States during the requisite periods. The director determined that the applicant had failed to submit sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. Therefore, the director denied the application on July 24, 2003.

On appeal, counsel, states that the Service did not consider all the evidence that the applicant had provided in support of his residence in the United States. Also, counsel, on appeal, provides the following additional evidence: an undated letter from [REDACTED] who stated that the applicant had worked for the [REDACTED] Bakery since January 2000; an unsigned rent letter dated May 20, 2003, from [REDACTED] who stated that the applicant had been a tenant since November 2002; an unsigned rent letter dated May 20, 2003, from [REDACTED] who stated that the applicant was a tenant in his home from December 2000 to November 2002; and a letter dated May 19, 2003, from [REDACTED] who stated that the applicant had been a patient at his office since December 2000.

The employment letter from [REDACTED] 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, the letter is not notarized nor is it in affidavit form. Additionally, the statements provided by [REDACTED] regarding the applicant's claimed residence 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 statements; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. It is also noted that these rent letters are neither signed nor in affidavit form. The letter from [REDACTED] the applicant has been a patient at his office since December 2000, however, the applicant has not provided any corroborative evidence in support of these statements.

The record of proceedings also contains a rent letter dated May 25, 2001, indicating that the applicant was a tenant at [REDACTED] New York since December 10, 2000. It is also worth noting that the applicant stated on his applications for temporary protected status and employment authorization filed on July 18, 2001 that he resided at 1 [REDACTED]. However, [REDACTED] stated in her rent letter that the applicant was a tenant in her house at [REDACTED] Huntington Station, New York, from December 2000 to November 2002. The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his claimed residence in the United States.

In addition, the applicant had previously submitted a copy of ticket receipt from Northwest Airlines reflecting a departure date of "28JAN01" on flight number [REDACTED]. His receipt appears to have been altered as the original date and passenger name seem to have been covered over and the applicant's name and an earlier date 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 alteration of the airline ticket receipt. 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 physical presence requirements described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient credible evidence to establish his qualifying continuous residence during the requisite time period. 8 C.F.R. § 244.2(c). Therefore, the application will also be denied for these reasons.

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.