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FILE: [REDACTED]
[EAC 02 284 50232]

Office: VERMONT SERVICE CENTER

Date: JUN 29 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:



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 that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel for the applicant argues that sufficient evidence has been presented to establish that the applicant has been continuously residing in and continuously physically present in the United States for the requisite period.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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.

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. An extension of the TPS designation has been granted 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).

The applicant initially submitted the following documentation with his TPS application:

1. An affidavit of support from [REDACTED] dated August 13, 2002, in which he states that he has known the applicant, and that the applicant has resided at [REDACTED] since August of 2000;
2. An affidavit of support from [REDACTED] dated August 13, 2002, in which she states that she has known the applicant, and that the applicant has resided at [REDACTED] since August of 2000;
3. An affidavit of support from [REDACTED] dated August 13, 2002, in which he states that he has known the applicant since 1993, and that the applicant has resided at [REDACTED] since August of 2000;
4. An affidavit of support from [REDACTED] dated August 13, 2002, in which he states that he has met the applicant, and that the applicant has resided at [REDACTED] since August of 2000;

On May 20, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant, in response, provided the following documentation:

5. An affidavit from [REDACTED] dated May 29, 2003, in which he states that he is the owner of the Supermarket 11 and that the applicant has worked for him on a part-time basis since January 1, 2002;
6. An affidavit from [REDACTED] dated June 3, 2003, in which he states that he is the pastor of [REDACTED] located at [REDACTED] that he has known the applicant since the year 2000, and that the applicant and his mother visit the church;
7. A receipt from Otto's Place, dated March 17, 2001, bearing an illegible first name with a last name of [REDACTED];
8. A money gram receipt, dated May 2, 2002, and bearing the applicant's name and address of [REDACTED] and [REDACTED];
9. A receipt from the [REDACTED] dated November 4, 2002, and bearing the applicant's name and [REDACTED] address.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 26, 2003.

On appeal, counsel for the applicant reasserts her claim and submits the following documentation:

10. A receipt from [REDACTED] dated February 15, 2001, and bearing the applicant's name and [REDACTED] address;
11. A receipt from [REDACTED] dated December 8, 2002, and bearing the applicant's name;
12. A receipt from [REDACTED] dated June 4, 2003, and bearing the applicant's name and address of [REDACTED];
13. A receipt from [REDACTED] dated May 2, 2003, and bearing the applicant's name and the [REDACTED] address;
14. An affidavit of support from [REDACTED] dated September 12, 2003, in which he states that he has known the applicant since January 1, 2001, that he has been residing in the United States since that time, and that he currently resides at [REDACTED];
15. An affidavit of support from [REDACTED] dated September 12, 2003, in which he states that he has known the applicant since January 1, 2001, that he has been residing in the United States since that time, and that he currently resides at [REDACTED] and [REDACTED];
16. An affidavit of support from [REDACTED] dated September 2, 2003, in which he states that he has known the applicant since January 1, 2001.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to September 6, 2002. The affidavit from [REDACTED] who states that he is the pastor of [REDACTED] (No. 6 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

The employment affidavit from [REDACTED] (No. 5 above) also has little evidentiary weight or probative value. Specifically, the affiant does not provide a description of the applicant's duties nor does he provide the address where the applicant resided during the period of his employment. It is further noted that there has been no corroborative evidence submitted to support the employment affidavit. There have been no income tax records, payroll receipts, cancelled checks, pay stubs, or pay statements submitted to substantiate the claim made by the affiant.

The Otto's Place receipt and the [REDACTED] (Nos. 7 and 10 above) alone are insufficient to establish the applicant's continuous residency and continuous physical presence in the United States from February 13, 2001, to September 6, 2002. The applicant claims to have lived in the United States since July of 1993. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The applicant submitted three affidavits of support (Nos. 1, 2, and 4 above) in which the affiants claim to have known the applicant, however, they do not specifically state for what period of time they have known him. Although six affiants in numbers 1, 2, 3, 4, 14, and 15 above state that the applicant's residence has been [REDACTED] since August of 2000, there has been no corroborative evidence, such as rent receipts, to substantiate the claims. It is noted by the AAO that none of the affiants explain the origin of the information to which they attest. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The remaining evidence fails to document the applicant's continuous physical presence or continuous residency in the United States during the requisite period.

Counsel has failed to establish that the applicant has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS 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.