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20 Mass. Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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Services

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MAY 02 2005

[Redacted]

FILE: [Redacted]
[WAC 02 278 52401]

Office: CALIFORNIA SERVICE CENTER Date:

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.

Cindy M. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record indicates that the applicant filed his Form I-821, Application for Temporary Protected Status, on September 6, 2002. On February 14, 2003, the applicant was requested to provide evidence of identity and nationality, evidence of continuous residence in the United States since February 13, 2001, and evidence of continuous physical presence in the United States since March 9, 2001.

On April 8, 2003, the director erroneously denied the application because the applicant had abandoned his application by failing to respond to a request for additional evidence. The applicant did respond to the Notice of Intent to Deny. The record indicates that his response to the notice was received at the California Service Center on March 19, 2003, prior to the issuance of the denial for abandonment. In his response, the applicant provided evidence of identity and nationality and evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant responded to the Notice of Decision denial on May 27, 2003. The applicant states that he sent all of the requested documents, and requests that he be granted TPS. It is noted that the applicant's response to the Notice of Decision denial was received at the California Service Center on May 27, 2003, more than seven weeks after the mailing date of the Notice of Decision denial.

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 temporary protected status 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.

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. Subsequent extensions of the TPS designation have 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 did not submit any evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, with the Form I-821, Application for Temporary Protected Status.

In response to the Notice of Intent to Deny, the applicant submitted four "bills" from [REDACTED] location not indicated, dated March 14, 2001; April 25, 2001; May 30, 2002; and, June 27, 2002. Each "bill" indicates an "Original Amount" of \$600.00, a "Balance Due" of \$600.00, and a "Check Amount" of \$600.00."

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 8, 2003.

In his response to the denial notice dated April 8, 2003, the applicant states that he has provided "all the requested papers on time;" however, he failed to provide any additional evidence of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The "bills" from [REDACTED] are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence during the requisite time periods. The bills appear to have been altered, and the applicant's name appears to have been typed onto the bills after they were issued. The applicant's name, [REDACTED] is typed in a different font from the rest of each bill. The applicant has not provided any explanation for this discrepancy.

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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Additionally, the applicant claims to have lived in the United States since 1995. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these "bills;" however, no such evidence has been provided.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has not submitted sufficient credible evidence to establish that he satisfies the residence and 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.