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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm., A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: MAY 11 2005

[EAC 02 009 51199]

IN RE:

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: 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.

for

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

On appeal, the applicant provides a statement and one additional document in support of the appeal.

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 designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 19, 2001.

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 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).

In a notice of intent to deny, dated April 24, 2003, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes.

The director found that the documentation submitted, in response to the notice of intent to deny, conflicted with previously submitted documentation and the facts presented in the application. The director found that the letter provided by the applicant from [REDACTED] the general manager of The Barkley Restaurant & Bar at the Brookside Country Club in Pasadena, California, stating that the applicant has been a prep cook in the kitchen since January 1, 2001, conflicted with the letter previous submitted with the application from [REDACTED] Landscaping, in Damascus, Maryland, who stated that the applicant worked for him from August 2000 through August 2001. The director concluded that the evidence submitted was not sufficient credible evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director denied the application on June 26, 2003.

On appeal, the applicant states, in pertinent part, that:

I entered the United States on August 24, 2000. From that time until March 2002 I resided in the State of Maryland. In March 2002 I came to live in the State of California. When I arrived in California I obtained work at Brookside Country Club. I realized that [REDACTED] submitted a letter stating that I was Employed from January 1, 2001. However, this date is incorrect. I believe that this was an administrative error.

I admit that I did not read the letter. I just sent it in to Immigration in my hurry to answer their request for evidence. If I had taken the time to read the letter I would probably have noticed this error although my English is not very good so even if I had read it I still may not have noticed the error.

The applicant submits a letter, dated July 7, 2003, from his sister, [REDACTED] who states that the applicant lived at [REDACTED] 20906, from August 24, 2000 to March 2002.

The applicant's statement on appeal is not sufficient in settling the conflict between the two aforementioned letters of employment. In fact, the applicant does not mention the letter from M.C Landscaping in Damascus, Maryland indicating that he had been employed by them for approximately one-year, from August 2000 to August 2001. It is also difficult to comprehend that the general manager of a restaurant would make such a huge error in the date (approximately one year) of the applicant's employment with the restaurant especially

since he stated in his letter that the applicant "has done an outstanding job." None of the documentation contained in the record or presented on appeal is sufficient in demonstrating the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. Neither the employment letter from M.C. Landscaping or the employment letter from The Barkley Restaurant & Bar is supported by any type of employment records such as pay stubs. The applicant's simply stating that he entered the United States on August 24, 2000, and that there was an error in his employment dates, is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant had ample time to have had the discrepancies with the employment dates corrected. 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, 591-92 (BIA 1988). 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. *Id.*, 582, 591.

The applicant has failed to provide sufficient credible evidence to establish that he 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 on these grounds 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.