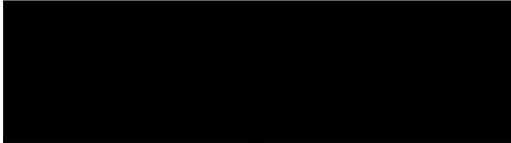


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MI

FILE: [REDACTED]
[EAC 03 009 53095]

Office: Vermont Service Center

Date: **NOV 04 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 was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel, on behalf of the applicant, submits additional evidence in support of the applicant's claim of eligibility for TPS.

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 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. 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 of proceedings confirms that the applicant filed his application on September 11, 2002, after the initial registration period from March 9, 2001 through September 9, 2002, had closed. To qualify for late registration,

the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

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).

On June 1, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The director noted in her June 1, 2004 request that the applicant had only provided affidavits along with his TPS application. However, the director also noted that affidavits, by themselves, are insufficient to establish residence in the United States.

In response, the applicant submitted the following documentation: an employment letter dated June 8, 2004, from Mr. [REDACTED] General Manager of the Uno Restaurant & Bar in Revere, Massachusetts, who stated that the applicant has been an employee since January 2001; and, an affidavit dated June 15, 2004, from his brother, Mr. [REDACTED] who stated that applicant has been living with him since he arrived the United States in November 2000. The director determined that the applicant failed to establish he continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States from March 9, 2001, to the date of filing his application. The director also determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 4, 2004.

On appeal, counsel, on behalf of the applicant, submits the following documentation: an affidavit dated August 23, 2004, from Mr. [REDACTED] who stated that the applicant has been in the United States since November 2000; and, a check payment history summary dated August 20, 2004, from Uno Restaurant & Bar, indicating the applicant's employment from January 6, 2001 to February 5, 2001.

The first issue in this proceeding is whether the applicant is eligible for late registration.

Counsel, on appeal, submits evidence in an attempt to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite periods. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. Counsel has not submitted any evidence to establish that the applicant has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for TPS late registration will be affirmed.

The second issue in this proceeding is 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, to the date of filing his application.

On appeal, counsel provides another affidavit from Mr. [REDACTED] stating that he provided financial support for the applicant. The applicant also provided a summary of paychecks he had received between January 6, 2001 and February 5, 2001. The payments to the applicant as reflected on this summary, however, pre-date the requisite time periods for El Salvadoran TPS, and do not cover the time period from February 13, 2001, up to the date of filing his application (September 11, 2002). Additionally, it is noted that the signature of Mr. [REDACTED] on the payment history letter dated August 20, 2004, does not match the signature on the June 8, 2004 employment letter also from Mr. [REDACTED]. 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).

It is concluded that the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The applicant has, therefore, failed 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 also be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.