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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



MI

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 07 2005
[EAC 02 149 50473]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center, and the matter 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: 1) resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS and requests an additional 30 days from August 27, 2004, in which to submit a brief and/or evidence to the AAO. As of this date, no further response has been received.

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 along with his TPS application the following documentation:

1. A copy of an earnings statement from [REDACTED] bearing the applicant's name as employee with a hire date of January 1, 2001, a period ending date of January 7, 2001, and a pay date of January 15, 2001; and,
2. A copy of a Western Union money gram dated January 7, 2001, and bearing the applicant's name as sender.

On November 5, 2002, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. A copy of an earnings statement from [REDACTED] bearing the applicant's name as employee with a hire date of December 19, 2000, a period ending date of January 7, 2001, and a pay date of January 12, 2001;

4. A copy of a utility bill from Rockland Electric Company dated January 25, 2001, and bearing the applicant's name; and,
5. Copies of two Verizon bills dated January 13, 2001, through March 12, 2001, and bearing the applicant's name.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 27, 2003.

The applicant appealed the director's decision on August 6, 2003. Because the appeal was filed late, the director rejected it as an appeal and accepted it as a Motion to Reopen. On motion, the applicant reasserted his claim of eligibility for TPS and submitted the following documentation:

6. A copy of a Western Union money gram dated January 14, 2001, and bearing the applicant's name as sender;
7. A copy of an affidavit from [REDACTED] in which she states that she rented a room to the applicant at [REDACTED] New York from December 23, 2000, to May of 2002; and,
8. A copy of a past due statement from [REDACTED] dated January 30, 2001, and bearing the applicant's name and Piermont, New York, address.

On motion, the applicant also resubmitted a copy of the earnings statement from [REDACTED] (No. 1 above) dated January 7, 2001.

The director determined that the applicant had failed to overcome the grounds of denial, which were based on the applicant's failure to submit sufficient evidence to establish continuous residence, and continuous physical presence in the United States, and denied the I-821 again on July 27, 2004.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. The applicant requested an additional 30 days in which to submit evidence and/or a brief in support of his appeal. To date, the AAO has not received any additional information from the applicant.

The applicant submitted copies of two inconsistent earnings statements from [REDACTED] (Nos. 1 and 3 above). The documents above appear to have been altered as the payroll periods and dates of hire are conflicting. 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 alterations in the documents above. In addition, the earnings statement dates are prior to the requisite time period, and therefore, even if they were credible, they would not establish continuous residence and continuous physical presence in the United States.

Although [REDACTED] states in her affidavit (No. 7 above) that the applicant has rented a room from her from December 23, 2000, to May of 2002, there has been no corroborative evidence, such as rent receipts or cancelled checks, submitted to substantiate this claim.

All other evidence submitted is dated prior to the requisite time period and therefore, cannot be used to demonstrate the applicant's continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant has failed to establish that he has met the continuous residence and continuous physical presence 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. The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.