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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 08 2005

[EAC 02 209 51032]

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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The director also denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

On appeal, the applicant submits a statement and additional evidence.

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 has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed his Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 31, 2002.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The first issue in this proceeding is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted:

1. a photocopy of the biographic page of his Salvadoran passport issued in Washington, D.C., on August 31, 1999.

On May 7, 2004, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant was also requested to provide the final court disposition of his arrest in Fairfax County, Virginia, on June 23, 2002, on the charge of felonious assault. The applicant, in response, provided:

2. a photocopy of his Virginia Identification Card issued on September 21, 1999; and,
3. a photocopy of a Virginia Certificate of Title For a Vehicle issued on December 18, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on August 4, 2004.

On appeal, the applicant states that he was living and working in the United States during the requisite periods to establish continuous residence and continuous physical presence. He submits the following:

4. an affidavit from [REDACTED] stating that he and the applicant worked for the same company from December 2000 to February 2002;
5. a photocopy of a letter dated November 20, 2001, from IMBS of Plantation, Florida, regarding an unpaid balance on a medical bill;
6. a photocopy of a billing statement dated November 9, 2001, from North Virginia Community Hospital in Arlington, Virginia, for medical services received on May 2, 2001;
7. a photocopy of an automobile insurance billing statement from Virginia Farm Bureau Insurance in Richmond, Virginia, for the period from June 27, 2001 to June 27, 2002; and,

8. a photocopy of an overdue notice dated November 5, 2001, from American Medical Collection Bureau in Falls Church, Virginia, regarding an unpaid balance for medical services received at INOVA Fair Oaks Hospital, Fairfax County, Virginia.

The biographic page of the applicant's Salvadoran passport (No. 1 above), the applicant's Virginia Identification Card (No. 2 above), and his Certificate of Title (No. 3 above) do not establish the applicant's qualifying continuous residence and continuous physical presence in the United States because they predate the requisite periods. The applicant has provided only one affidavit from Mr. [REDACTED] (No. 4 above) to establish his continuous residence and continuous physical presence in the United States prior to May 2001. The applicant claims to have lived in the United States since October 4, 1998. It is reasonable to expect that he would have some other type of contemporaneous evidence to support this affidavit; however, no such evidence has been submitted. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has submitted evidence reflecting his residence and physical presence in the United States in May, June, and November 2001, but he has not provided any evidence to establish his continuous residence and continuous physical presence in the United States between those dates or since November 2001. The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

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 documentation submitted by the applicant is not sufficient 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.

The second issue in this proceeding is whether the applicant has provided the final court disposition of his arrest in Fairfax County, Virginia, on June 23, 2002, on the charge of felonious assault.

As previously stated, the applicant was requested on May 7, 2004, to submit the final court disposition of his arrest on June 23, 2002. In response, the applicant submitted court documents relating to a separate arrest. These documents indicate that the applicant was arrested on June 23, 2002, in Fairfax County, Virginia, and charged with driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 18.2-266/82-1-6, a Class 1 misdemeanor. The applicant was found guilty of this charge in the Fairfax County General District Court, Fairfax County, Virginia, on June 25, 2003. (Case No. [REDACTED]) However, the applicant failed to submit any court documents reflecting the final court disposition of his arrest for felonious assault.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on August 4, 2004.

On appeal, the applicant submits a Final Order from a jury trial in the Circuit Court of Fairfax County, Fairfax County, Virginia, indicating that the jury found the applicant not guilty of the felony charge of "ATTEMPTED MAIMING," and the case was dismissed on June 6, 2003. (Criminal Number [REDACTED])

However, this document does not reflect the arrest date or any other information to specifically link this trial to the applicant's arrest on June 23, 2002 on the charge of felonious assault. It is concluded that the applicant has failed, in response to the Notice of Intent to Deny and again on appeal, to submit sufficient evidence to establish the final court disposition of his arrest on June 23, 2002, on the charge of felonious assault. Therefore, the director's decision to deny the application on this basis is also 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 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.