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

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[redacted]

FILE: [redacted] [WAC 01 243 51358] OFFICE: VERMONT SERVICE CENTER DATE: NOV 21 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:

[redacted]

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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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 record shows that the applicant filed his TPS application on June 7, 2001. In support of the application, the applicant submitted:

1. A copy of an El Salvadoran birth certificate with English translation.

2. An affidavit dated May 30, 2001, from [redacted] indicating that he has personal knowledge that the applicant has resided in the United States from December 2000 to the present, and that the applicant came to live with him from December 25th until the present time.

In a notice of intent to deny dated October 24, 2003, the applicant was requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant submitted:

3. A statement dated November 6, 2003, from [redacted] of [redacted] Wilmington, California, indicating that the applicant was employed by that company from "approximately March 2001 to the end of January 2002."

4. A receipt dated January 20, 2001, issued by Metropolitan Medical Clinic & Rehabilitation Center for medical care.

5. A purchase receipt dated May 10, 2001, issued by G.B.K. International LLC, Los Angeles, California.

The director determined that the evidence furnished was insufficient to establish continuous residence and continuous physical presence during the requisite period and denied the application on March 10, 2004.

On appeal, counsel states that according to 8 C.F.R. § 103.2(b)(2), secondary evidence, such as letters and affidavits, can be submitted in lieu of unavailability of primary documentary evidence. He asserts that the director made "a poor and un-attentive examination of the evidences," and that the employment letter and the witness affidavit previously furnished, including the two affidavits (one from the applicant) submitted in support of the appeal, are sufficient to establish eligibility. Counsel resubmits a copy of the affidavit from (No. 2 above) and a copy of the statement of employment from (No. 3 above). He also submits:

6. A supplemental affidavit dated March 25, 2004, from indicating that he has known the applicant since birth, that the applicant first entered the United States on December 16, 2000, and from that date until May 2002, the applicant resided in his house until he moved to New York in May 2002. He states that during the time the applicant resided in his house, the applicant received all his support by providing him food and a room, and eventually, the applicant voluntarily contributed with the expense for food and rent.

The employment letter from (No. 3 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form, it is not attested to by the employer under penalty of perjury, the employer does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the periods(s) of layoff, if any. Moreover, the letter was not supported by any other corroborative evidence, such as pay statements.

Counsel submitted affidavits based on 8 C.F.R. § 103.2(b)(2). This regulation states, in part:

> If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties of the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

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). Apart from his own statement, the applicant, in this case, submitted affidavits from only one person. The affidavits has failed to overcome the unavailability of both primary and secondary evidence as provided in 8 C.F.R. § 103.2(b)(2). Additionally, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the affidavits, provided by one individual, to establish the applicant's qualifying residence in the United States are not supported by any other corroborative evidence, and are insufficient to establish eligibility.

The medical receipt from Metropolitan Medical Clinic (No. 4 above) is generic in nature and raises questions of credibility. The applicant could have submitted a copy of his medical record to show diagnosis and treatment received at this clinic. The remaining evidence (No. 5 above) establishes the applicant's continuous residence and continuous physical presence since May 2001.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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.