

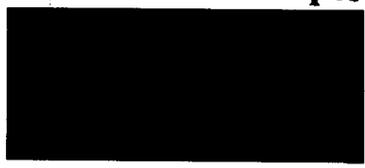
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U.S. Citizenship
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MI

FILE: [REDACTED]
[EAC 01 245 52040]

Office: VERMONT SERVICE CENTER

Date: **OCT 18 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: 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 he had continuously resided in the United States since February 13, 2001 and he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant states:

The reason for this appeal is to kindly ask you to reconsider your decision about my worker's authorization card. The reason for my delay was due (to) the fact that I was gathering additional documentation that may help in my case. I would greatly appreciate if you (would) grant me the opportunity to remain in this country.

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 parole; 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).

Upon initial submission, the applicant forwarded:

1. A letter dated January 18, 2001 from [REDACTED] the Director, Patient Financial Services, of the St. Joseph Medical Center, addressed to [REDACTED]. The director informed Mr. [REDACTED] that his charges for hospital services received on November 30, 2000 through the "St. Clare Van Project" had been paid in full.

On March 27, 2002 and again on April 2, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States as well as proof that [REDACTED] and [REDACTED] are the same person. The applicant did not respond to the director's requests.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 21, 2003.

On appeal, the applicant submits the following documentation:

2. A letter dated August 6, 2003 from [REDACTED] Controller of Big Steaks Management in Baltimore, Maryland. [REDACTED] states that the applicant has been employed with Ruth's Chris Steak House since December of 2000.
3. A letter dated August 4, 2003 from [REDACTED] President of [REDACTED] Inc. in Baltimore, Maryland. Mr. [REDACTED] states that he met Mr. [REDACTED] in 2001 and offered him employment that began on February 25, 2002. He also states "Mr. [REDACTED] has an excellent attendance and has been present with our organization since the beginning of his employment."
4. A copy of the applicant's 2002 Form W-2 and Earnings Summary from [REDACTED] Inc. in Baltimore, Maryland.
5. A copy of Mr. [REDACTED] 2002 Form W-2 Wage and Tax Statement from OS Restaurant Services, Inc. in Baltimore, Maryland.

The employment letters from Ms. [REDACTED] and Mr. [REDACTED] have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in affidavit form and are not signed and attested to by the employers under the penalty of perjury. Additionally, neither employment letter provides the address where the applicant resided during the period of his employment.

Additionally, the applicant has provided two documents containing the name [REDACTED], however, he has not produced evidence to show that he was provided the two documents while using that name as his alias. 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). As the applicant has failed to submit competent objective evidence to overcome the discrepancy concerning his use of the name [REDACTED] as his alias, the decision of the director to deny the application shall be affirmed for this reason.

The applicant has not submitted any evidence to establish his continuous residence or continuous physical presence in the United States during the period from just prior to February 13, 2001, to August 8, 2001. Consequently, the director's decision to deny the application for TPS will be affirmed for these additional reasons.

On October 24, 2000, an Immigration Judge in San Antonio, Texas ordered the applicant removed from the United States after he failed to appear for his hearing. The District Director of the San Antonio, Texas office of CIS, issued a Warrant of Removal/Deportation dated December 8, 2000 for his arrest.

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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.