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U.S. Citizenship  
and Immigration  
Services

MM

FILE:

[REDACTED]  
[EAC 02 250 54154]

Office: VERMONT SERVICE CENTER

Date: **SEP 06 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*

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 (AAO) 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 his continuous residence in the United States during the requisite period.

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 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 section 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.

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

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 26, 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).

On December 9, 2003, 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. The applicant was also requested to submit evidence of his nationality.

In response, the applicant submitted photocopies of the following documentation: his El Salvadoran birth certificate; the biographic page of his El Salvadoran passport issued by the Consulate General, Boston, Massachusetts, on February 21, 2003; pay stubs dated May 16, 2002, and December 11, 2003 from MECK, INC. d.b.a. X&O European Trattoria, Quincy, Massachusetts; a letter dated June 9, 2002, from the Director of Operations, X&O European Trattoria, Quincy, Massachusetts, stating that the applicant had worked for the company since "2/3/02;" and, pay stubs dated in June, July, September, and October of 1996 from UNO Restaurants, Inc., West Roxbury, Massachusetts.

With his initial TPS application, the applicant had also submitted a furniture receipt dated May 31, 2002, in addition to the initial copies of the 1996 pay stubs and the June 9, 2002, letter from the Director of Operations, X&O European Trattoria, Quincy, Massachusetts.

The director determined that the applicant had failed to establish his qualifying continuous residence in the United States since February 13, 2001, and, therefore, denied the application on March 26, 2004. The director's decision noted the substantial gap between the 1996 and 2002 pay stubs.

On appeal, the applicant states that he received a letter from his previous employer to prove that he has been in the United States since 1996. In support of the appeal, the applicant submits additional documentation consisting of:

1. An unsigned letter dated April 13, 2004, from the Human Resources Department, UNO Chicago Grill, Boston, Massachusetts, stating that the applicant was employed by UNO Restaurants, LLC, from July 26, 1996 to June 23, 2000, and was rehired and worked between January 16, 2001 and May 13, 2001;
2. Another letter dated April 19, 2004, from the [REDACTED] [REDACTED] stating that the applicant has worked as a cook with the company from February 3, 2002 to the present;
3. A letter from [REDACTED] stating that the applicant lived at his property on Pickney Street in Somerville, Massachusetts, from May 11, 1996 until November 30, 2001; and,
4. A letter from [REDACTED] stating that the applicant has lived with her since December 2001, and that she has known him since July 2001.

The employer letters listed above at Numbers 1 and 2, do not conform to the regulatory requirements under 8 C.F.R. § 244.9(a)(2)(i)(A) through (D), and therefore, have limited evidentiary value. Further, the letter listed at Number 1, is unsigned. It is also noted that the pay stubs from 1996 are under a different Social Security number than that which is given on the 2002 and 2003 pay stubs. The applicant did not explain the use of different Social Security numbers. The other evidence of record consists of two statements from individuals indicating the applicant's residence in the United States. These letters, however, are not supported by other corroborative evidence. The applicant claims to have lived in the United States since 1996. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters; however, no such evidence has been provided. The applicant has not established that he has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, for the reasons discussed above, the applicant also has failed to establish his continuous physical presence in the United States for the requisite period. He has not established that he has met the criteria described in 8 C.F.R. § 244.2 (b), and the application must also be denied for this reason.

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.