



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 255 51110]

Office: VERMONT SERVICE CENTER

Date: DEC 08 2006

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, Chief
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 failed to establish that he had: 1) entered the United States prior to February 13, 2001; and 2) continuously resided in the United States since February 13, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until September 9, 2007, 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).

On August 13, 2003, 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:

1. A letter from [REDACTED] in which the president of the company stated that the applicant began working for the company in July of 2002;
2. A letter from [REDACTED] in which he stated that the applicant was employed by D&M Construction company from February 20, 2001, to June 21, 2002;
3. Copies of pay statements from [REDACTED] bearing the applicant's name as employee and dated March, April, July, August, September, and December of 2001, and February of 2002;
4. An affidavit from [REDACTED] in which he stated that he has known the applicant since February of 2001; and,
5. An affidavit from [REDACTED] in which she stated that the applicant has rented a room from her at [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 17, 2003.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

6. An affidavit from [REDACTED] in which he states that he has known the applicant since February of 2001 and has provided him with transportation to work and around town;
7. An affidavit from [REDACTED] in which he states that he has known the applicant since February of 2001 and has transported him to the Puerta Del Cielo church located in Woodbridge, Virginia;
8. An affidavit from [REDACTED] in which he states that the applicant has rented a room from him at [REDACTED], Virginia, since February 1, 2001;
9. A copy of a Western Union money order receipt dated February 7, 2001 with the applicant's name listed as sender;
10. A copy of a receipt dated June 21, 2001 and bearing the applicant's name as renter; and,
11. Copies of Bank of America period statements bearing the applicant's name and dated June, July, and August of 2001.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001. The employment letters written by representatives of the JP Construction company and the D&M Construction company (see numbers 1 and 2 above) both indicate that the applicant did not begin work with the companies until after February 13, 2001. The photocopied pay stubs from D&M Construction company (see number 3 above) appear to have been altered as the original employee name, income amounts, and dates seem to have been covered-over and the applicant's name etc. has been inserted in its place. 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 alteration of the document in No. 3 above. Therefore, the reliability of the remaining evidence offered by the applicant is also suspect.

There has been no corroborative evidence submitted by the applicant to substantiate the statements made by [REDACTED] or [REDACTED] (see numbers 4, 6, and 7 above). It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

There has been no evidence submitted to support the statements made by [REDACTED] and [REDACTED] (see numbers 5 and 8 above) regarding the applicant renting a room from them at 14725 Dodson Drive in Woodbridge, Virginia since February of 2001. The single rent receipt (See number 10 above) submitted by the applicant is insufficient to establish his continuous residence and continuous physical

presence in the United States. The copy of the money order receipt (see number 9 above) that was provided by the applicant is not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts “may” be accepted in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s qualifying residence or physical presence in the United States. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

All other evidence submitted by the applicant is dated subsequent to the initial requisite time periods. The applicant has, therefore, failed to establish that he has met 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.

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 reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.