



U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 01 257 56316]

Office: VERMONT SERVICE CENTER

Date: **DEC 29 2006**

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 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 that he had continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's 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).

The applicant initially submitted the following documentation along with his TPS application:

1. An affidavit from the owner of _____ & Gardening in which he stated that the applicant has been employed by his company since May 7, 2000; and,
2. An affidavit from _____ in which he stated that he has known the applicant since August of 2000 when the applicant came to live with him at _____ Far Rockaway, New York.

On May 10, 2004, 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. The applicant, in response, provided the following documentation:

3. A copy of the applicant's income tax records for the 2001, 2002, and 2003 tax year;
4. An affidavit from _____ in which he stated that he has known the applicant since January of 2001, has been his co-worker and has become the applicant's friend;

5. An affidavit from [REDACTED] in which she stated that the applicant is her younger brother and that she gave him food and shelter since his arrival in the United States in April of 2000;
6. A copy of a New York State Acknowledgement of Paternity listing the applicant as the father of [REDACTED] and dated November 12, 2003;
7. A copy of a New York State Certificate of Birth listing the applicant as the father of [REDACTED] who was born in that state on November 5, 2003;
8. Copies of pay statements from [REDACTED] dated March of 2003, January of 2004 and February of 2004, and bearing the applicant's name as employee;
9. Copies of pay statements from [REDACTED] dated November of 2001 and March of 2002, and bearing the applicant's name as employee;
10. Copies of money transfer receipts from [REDACTED] and [REDACTED] all bearing the applicant's name as sender and dated July of 2001, April and December of 2002, and March and November of 2003; and,
11. A copy of an information sheet from the Social Security Administration dated October 1, 2001, and bearing the applicant's name and [REDACTED] address.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 11, 2005.

On appeal, counsel states on behalf of the applicant, that he came to the United States in April of 2000; that he worked as a day laborer and received wages in the form of cash; and that his landlord refused to write a letter verifying his residence.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel claims that the applicant's landlord was a slumlord who refused to provide verification of the applicant's residence, and that the applicant lived in a room with many other undocumented males. Contrary to this claim, the applicant has submitted affidavits (see numbers 2 and 5 above) in which the affiants claim that the applicant rented a room in an apartment from them. Further, counsel claims that the applicant was a day laborer and was paid for his services in cash. Contrary to this claim, the applicant has submitted a copy of pay statements (see numbers 8 and 9 above) that were issued to the applicant for his services as an employee. 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 inconsistencies.

The income tax records submitted by the applicant do not show the specific dates, during any given tax year, that the applicant received wages, and therefore cannot be used to establish his eligibility for TPS. There has been no corroborative evidence submitted to support the statements made by the affiants. 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 continuous residence or continuous physical presence.

There has been no corroborative evidence submitted to support the copies of the money order receipts submitted by the applicant. 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 the other evidence submitted by the applicant is either dated prior to or subsequent to the requisite time periods and cannot be used to demonstrate the applicant's presence in the United States since February 13, 2001. The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS 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.