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FILE:



Office: VERMONT SERVICE CENTER

Date: **FEB 21 2006**

[EAC 01 244 57360]

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:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An untimely appeal was treated as a Motion to Reopen and the application was denied again by the Director, Vermont Service Center. The applicant's appeal of the second denial was treated as a Motion to Reopen and the application was denied again by the Director, Vermont Service Center. The applicant appealed the director's decision on the motion, and it 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 initially determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application on February 2, 2004.

On March 22, 2004, the applicant filed the initial motion and stated that he has proof that he has been physically present in the United States on or before February 2001. The applicant also submitted additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The director determined that the applicant had not overcome the basis for the denial and denied the application again on July 8, 2004.

On August 18, 2004, the applicant submitted a subsequent motion in which the applicant submitted additional documentation, and resubmitted evidence previously provided, in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The director determined that the applicant had not overcome the basis for the denial and denied the application again on December 22, 2004

On appeal, the applicant asserts that he entered the United States in 1997 and has maintained continuous physical presence in this country since then. The applicant also submits additional documentation, and resubmits evidence previously provided, in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite 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 August 6, 2001. On September 19, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

1. Statements from [REDACTED]
2. A copy of a payroll record from AAPR Cleaning Services showing salary payments from October 13, 2001 to October 10, 2002.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On his initial motion, dated March 22, 2004, the applicant stated that he has proof that he entered the United States in October 1997 and has been in the United States since on or before February 2001. The applicant also submitted the following documentation:

3. Statements [REDACTED]
4. Copies of 2002 and 2003 tax documentation.

The applicant also resubmitted evidence previously provided.

The director determined that the applicant had not overcome the basis for the denial and denied the application again on July 8, 2004.

On his subsequent motion, dated August 18, 2004, the applicant stated that he had submitted his initial appeal on time. The applicant also submitted a statement [REDACTED] and a copy of a 2003 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return. The applicant also resubmitted evidence previously provided.

The director determined that the applicant had not overcome the basis for the denial and denied the application again on December 22, 2004.

On appeal, the applicant states that he arrived in the United States in 1997. The applicant also submits statements [REDACTED]. The applicant also resubmits evidence previously provided.

[REDACTED] stated that his company employed the applicant from October 6, 2001 to October 18, 2001 and from September 7, 2002 to the present as a window cleaner. [REDACTED] stated that the applicant rented a room in his house from September 2003. However, [REDACTED] and [REDACTED] can only attest to the applicant's presence in the United States since October 6, 2001 and September 2003 respectively. Similarly, the payroll records also only establish the applicant's presence from October 13, 2001.

[REDACTED] stated that the applicant has rented a room from her from December 1997 through September 2001. [REDACTED] stated that the applicant rented a room at her house from January 1998 through February 2001.

However, these statements are not supported by any corroborative evidence. 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. Furthermore, [REDACTED] offer conflicting dates regarding the dates the applicant rented a room from them. This discrepancy has not been satisfactorily explained. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

[REDACTED] Manager/Owner of Unlimited Cleaning Company, Falls Church, Virginia, stated that the applicant worked for her company as "maintenance" from May 1999 through August 2001. [REDACTED] manager of La Feria, Alexandria, Virginia, stated that the applicant worked for his company as a labor helper from December 1999 through July 2000. However, these statements are not supported by any corroborative evidence. Furthermore, 8 C.F.R. § 244.9(a)(2)(i) provides that letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. These letters do not meet that criteria.

The tax records are all dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.

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.