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U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE: [REDACTED]
[EAC 01 207 51804]

OFFICE: VERMONT SERVICE CENTER

Date: JUN 05 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:

[REDACTED]

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 (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 after determining that the applicant had abandoned his application by failing to appear for fingerprinting.

If an individual requested to appear for fingerprinting does not appear, CIS does not receive his or her request for rescheduling by the date of the fingerprinting appointment, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his application on June 7, 2001. On April 3, 2002, the applicant was requested to report for fingerprinting on May 21, 2002. The record does not contain a response from the applicant and the applicant did not appear to be fingerprinted; therefore, the director concluded that the applicant had abandoned her application and denied the application on May 12, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

Counsel for the applicant responded to the director's decision on May 31, 2003. Counsel requested that the applicant's TPS application be reopened and stated that the applicant never received any notice to be fingerprinted.

On April 5, 2004, the director sent the applicant a Notice of Intent to Deny requesting that he submit evidence to establish continuous residence and continuous physical presence in the United States during the requisite period.

The applicant failed to respond to the director's request for evidence.

The director subsequently denied the applicant's TPS application on October 8, 2004.

On appeal, counsel reasserts 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 TPS designation has been granted with validity 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 [REDACTED] which she stated that she has known the applicant since December of 2000 and that the applicant has resided with her [REDACTED] Brentwood, New York, since that time;
2. Copies of pay stubs from [REDACTED] dated March 25, 2001, and April 1, 2001 and bearing the applicant's name as employee; and,
3. A copy of an earnings statement [REDACTED] dated March 18, 2001 and bearing the applicant's name as employee.

On April 5, 2004, 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 failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 8, 2004.

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

4. An affidavit [REDACTED] which she states that she is the applicant's sister and that he lived at [REDACTED] Brentwood, New York, since December of 2000, and moved to live [REDACTED] Brentwood, New York, in September of 2003;
5. Copies of two untranslated letters;
6. A letter from the chef at [REDACTED] in which he states that the applicant has been employed by the hotel since the year 2000;
7. A letter from the operations manager [REDACTED] in which he stated that the applicant has been employed by the company since December of 2000; and,
8. A letter from [REDACTED] Inc. in which the company representative stated that the applicant has been using the company's services on a monthly basis since December of 2000.

The applicant resubmits copies of his pay stubs from [REDACTED] on appeal.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] numbers 1 and 4 above regarding the applicant's claimed presence in the United States since December of 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, there has been no evidence provided. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. 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).

The pay statements submitted (Nos. 2 and 3 above) are dated subsequent to the requisite time period and, therefore, cannot be used to establish the applicant's continuous residence and continuous physical presence in the United States. The applicant has failed to submit English translations for the two letters submitted (No. 5 above) and therefore, they will not be taken into consideration for purposes of establishing the applicant's eligibility.

The employment letters from the [REDACTED] Company (Nos. 6 and 7 above) 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 representatives do not provide the address where the applicant resided during the period of his employment. It is further noted that the letters were not written on company stationery and the affiants did not indicate the location of their establishments, or verify that the businesses were even located inside the United States.

The letter from the [REDACTED] representative (No. 8 above) is vague and is not accompanied by any corroborating evidence to establish the frequency in which the applicant utilized the company's services.

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.