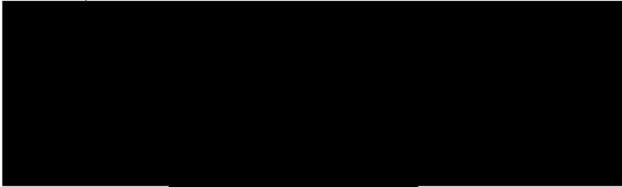


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MM

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 09 2006**

[EAC 02 263 51318]

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.

for 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 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 originally denied the application on July 7, 2003, because the applicant had failed to respond to a request on April 30, 2003, to submit evidence to establish that he had continuously resided in the United States since February 13, 2001, he had been continuously physically present since March 9, 2001, and that he had reregistered between September 9, 2002 and November 12, 2002. Because the applicant failed to respond, the director denied the application on July 7, 2003. The applicant filed a motion to reopen the director's decision on December 10, 2003. He stated that he did not receive the director's request although he had submitted Form AR-11, Change of Address Card. The director granted the motion; however, after a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome. Therefore, the applicant was requested on March 31, 2004, to submit evidence to show that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. Because the record did not include a response, the director again denied the application on June 25, 2004.

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 alien 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 § 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 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 term *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.

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 valid until September 9, 2006, 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 record shows that the applicant filed his TPS application on August 12, 2002. The applicant, on appeal, asserts that he has been complying with the director's requests to submit additional evidence. The record of proceeding, however, is devoid of any evidence to establish that the applicant furnished requested documentation to establish continuous residence and continuous physical presence during the requisite period. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The applicant, on appeal submits copies of the following:

1. A statement dated November 18, 2003, from [REDACTED] indicating that he rented a room to the applicant at [REDACTED] Elmont, New York, from January 1999 to November 2003.
2. Another statement dated April 14, 2004, from [REDACTED] indicating that he rented a room to the applicant at [REDACTED] Elmont, New York, from January 15, 2003 to April 14, 2004.
3. Two statements from [REDACTED] indicating that he knows the applicant has been living in the United States since March 20, 2001, because he has worked with the applicant since that time until

June 2001; and although they do not work together anymore, they see each other regularly or speak on the telephone.

4. Affidavits from [redacted] [first name illegible] [redacted] and [first name illegible] [redacted] all stating that they know the applicant has been living in the United States since January 14, 1999.
5. An affidavit dated May 3, 2004, from [redacted] indicating that she has known the applicant for the past four years, and that the applicant has always indicated to her by word and action that he has established residence in the United States.

The inconsistencies of the above statements regarding the applicant's residence and physical presence in the United States raise questions of credibility. Mr. [redacted] indicated on November 18, 2003 (No. 1 above), that he rented a room at [redacted] to the applicant from January 1999 to November 2003; he again indicated on April 14, 2004 (No. 2 above), that he rented a room at this same address from January 15, 2003 to April 14, 2004. However, the applicant indicated on his TPS application, filed on August 12, 2002, that he was residing at [redacted] in New York. He also indicated on an undated AR-11 that his "last address" was [redacted]. Additionally, it is noted that the signature and telephone number of Mr. [redacted] shown on No. 1 above contains a different signature and telephone number for Mr. [redacted] than that shown on No. 2 above.

The statements from [redacted] and [redacted] (No. 4 above) and Ms. [redacted] (No. 5 above) attest to the applicant's continuous residence and continuous physical presence based on their "personal knowledge," but fail to provide any specifics regarding the nature, circumstances, or origin of the affiants' acquaintanceship with the applicant. While Mr. [redacted] (No. 2 above) indicated that he worked with the applicant from March 20, 2001 to June 2001, he did not list the name and place of employment.

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). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

Additionally, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the affidavits, without supporting documentary evidence, are insufficient to establish that the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. The applicant claimed to have entered the United States on January 14, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.