



U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 17 2006

[EAC 03 143 50777]

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 applying for 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for 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 applicant who is a national of a foreign state designated by the Attorney General 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 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. 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, 2007, upon the applicant's re-registration during the requisite period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The applicant filed his initial TPS application on April 7, 2003.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on May 15, 1997. In support of his application, the applicant submitted the following evidence:

1. a letter dated March 31, 2003, from [REDACTED] co-owner of Peking Restaurant in Williamsburg, Virginia, stating that the applicant has worked for his restaurant since October 2000 as a kitchen cook at a salary of \$30,000 per year; and,
2. a letter dated April 3, 2003, from [REDACTED] President of [REDACTED] in Williamsburg, Virginia, stating that the applicant has been a family friend since November 2000 and the applicant and his family have been customers of his store since March 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 29, 2004.

On appeal, counsel for the applicant contends that due process requires that this case be reopened and that a decision be made on the merits taking into consideration the enclosed additional documentation. Counsel submits the following additional evidence:

3. photocopies of money transfer receipts dated: January 6, 2000; January 6, 2002; May 27, 2002; September 12, 2002; December 11, 2003; and, March 16, 2004;
4. photocopies of the applicant's earnings statements from Peking Restaurant for the pay periods ending July 8, 2001 and October 27, 2002, reflecting a hire date of May 8, 2001;
5. a photocopy of a FedEx USA Airbill dated August 30, 2002;
6. a photocopy of a Virginia Individual Saltwater Sport Fish fishing license valid from January 1, 2003 through December 31, 2003;
7. a photocopy of the applicant's Virginia Identification Card issued on March 25, 2004; and,
8. a photocopy of a CIS notice acknowledging receipt of the applicant's Form I-765, Application for Employment Authorization, at the Vermont Service Center on April 7, 2003.

All evidence submitted in support of the application has been considered. [REDACTED] stated in his employment letter (No. 1 above) that the applicant has worked for him since October 2000. This statement is contradicted by the earnings statements from Peking Restaurant reflecting a hire date of May 8, 2001. Neither the applicant nor [REDACTED] has provided any explanation for this discrepancy in the applicant's dates of employment for the restaurant. 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. Further, it is incumbent on 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. (Comm. 1988).

Furthermore, the employment letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit format and [REDACTED] does not provide the address where the applicant resided during the period of his employment.

Additionally, the applicant has provided only one earnings statement from Peking Restaurant dated July 8, 2001 (No. 4 above) to establish his qualifying continuous residence and continuous physical presence in the United States in 2001.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States throughout the requisite periods. He has, thereby, failed to establish that he has met the 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.

Beyond the decision of the director, the applicant has not established his eligibility for late initial registration. The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The applicant did not file his TPS application until April 7, 2003. Therefore, the application also must be denied for this reason.

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 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.

**ORDER:** The appeal is dismissed.