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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 266 52976]

Office: VERMONT SERVICE CENTER

Date: APR 27 2007

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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).

On July 27, 2003 and August 6, 2003, 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 failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit any evidence to establish his eligibility for TPS and denied the application on October 3, 2003. The applicant filed an appeal on November 5, 2003.

On appeal, the applicant reasserted his claim of eligibility for TPS and submitted the following documentation:

1. Copies of two letters addressed to the applicant at [REDACTED] with illegible post dates;
2. A copy of a FedEx receipt dated January 2, 2002, and bearing the applicant's name as recipient with his address listed as [REDACTED]
3. Copies of money transfer receipts from RIA Money Transfer Services dated July 28, 2002, August 4, 2002, and August 19, 2002, and bearing the applicant's name as sender with his address listed as [REDACTED]

4. A copy of a money transfer receipt from RIA Money Transfer Services dated October 1, 2002, and bearing the applicant's name as sender with his address listed as [REDACTED] Virginia;
5. A letter from the Associate Pastor of Two Sister Parishes in Omaha, Nebraska, in which he stated that the applicant resides at [REDACTED] Omaha, Nebraska, and has been registered with the church since November 12, 2000; and,
6. An affidavit from [REDACTED] in which he stated that the applicant rented a room in his basement at [REDACTED], Texas, from January of 2001 to June of 2001.

The AAO remanded the case to the Vermont Service Center on June 15, 2005, because the director had failed to specify the reasons for the denial.

The director denied the TPS application on May 8, 2006, because the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal from the director's May 8, 2006 decision the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

7. Copies of the applicant's IRS Form 1040, U.S. Individual Income Tax Returns for the 2000, 2001, 2002, 2003, 2004, and 2005 tax years;
8. Copies of the applicant's IRS Form W-2, Wage and Tax Statements for the 2003, 2004, and 2005 tax years;
9. A photo copy of the applicant's New Jersey License issued to him on January 14, 2005;
10. An untranslated statement from Ria Financial Services;
11. A copy of a birth certificate from New Jersey that lists the applicant as the father of a male child born in that state on January 16, 2006;
12. A copy of a birth certificate from New Jersey that lists the applicant as the father of a female child born in that state on December 19, 2004;
13. A copy of a residential lease agreement bearing the applicant's name as lessee, for the premises known as [REDACTED], Omaha, Nebraska for the period of December 1, 2000 to December 1, 2002; and,
14. Copies of rent receipts bearing the applicant's name and dated December of 2000 and January to July of 2001.

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. The applicant submitted a copy of a residential lease agreement (see # 12 above) that indicated his place of residence from December 1, 2000 to December 1, 2002, to be that of [REDACTED], Nebraska. The applicant also submitted rent receipts (see # 13 above) for December of 2000 through July of 2001. However, in an affidavit dated May 22, 2002 (see # 5 above) Mr. [REDACTED] states that the applicant lived in his basement at [REDACTED], Texas, from January of 2001 to June of 2001. It is also noted that the applicant has submitted

numerous receipts (see #s 2, 3, and 4 above) that are dated during the Omaha, Nebraska lease period, which indicate that he lived in Clinton, Maryland, Manassas, Virginia, and Hampton, Ohio. 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. Based upon this finding, the reliability of the remaining evidence offered by the applicant is questionable.

The two letters submitted by the applicant (see # 1 above) contain illegible post dates and cannot be used to determine the applicant's eligibility for TPS. The Associate Pastor indicates that the applicant has been registered with the church since November of 2000, with his address being 3321 North 106 Plaza, Omaha, Nebraska. However, the applicant submitted a lease agreement for that address that did not allegedly commence until December of 2000.

The individual tax returns submitted by the applicant for the 2000, 2001, and 2002 tax years (see # 6 above) are unsigned, and there is no indication from the record of proceeding that they were actually submitted for consideration by the Internal Revenue Service. Further, there has been no corroborative evidence submitted to substantiate the tax returns.

The applicant submitted on appeal what appears to be a financial statement from [REDACTED] (see # 9 above). However, the applicant has failed to provide an English translation of the document. Because the applicant failed to submit certified translations of the document, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Even if the applicant were to provide an English translation of the document, a financial statement alone does not establish eligibility.

All other evidence submitted by the applicant is dated subsequent to the requisite time periods and is insufficient to establish the applicant's eligibility. 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.