



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]  
[EAC 02 057 50447]

Office: VERMONT SERVICE CENTER

Date: AUG 24 2007

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: 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.

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 initially denied the TPS application on March 16, 2004, because the applicant failed to respond to three requests for evidence; and therefore, failed to establish that he was eligible for TPS. The applicant filed an appeal on August 30, 2005. The director treated the appeal as a motion to reopen because the appeal had been untimely filed. The director denied the application again on February 10, 2006 because the applicant had 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, the applicant asserts his 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, to 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).

The applicant initially provided the following documentation:

1. An affidavit from [REDACTED] in which he stated that he has known the applicant to be in the United States since before February 13, 2001;
2. An affidavit from [REDACTED] in which she stated that he has known the applicant to be in the United States since before February 13, 2001;
3. An affidavit from [REDACTED] in which he stated that he has known the applicant to be in the United States since before February 13, 2001; and,
4. Copies of pay statements dated February through October of 2001, from Haviland Candy Company, and bearing the name [REDACTED]

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 16, 2004.

On motion, the applicant provided the following documentation:

5. A letter from the executive administrator of Aramark Group in which she stated that the applicant, [REDACTED] was hired by the New England Confectionary Company (NECCO) on October 1, 1999, who on September 27, 2004, transferred the Union Contract to Aramark Facility Services Group;
6. A letter from the Human Resources department of NECCO, in which it is stated that the applicant, [REDACTED], has been employed by the company from October 1, 1999 to October 17, 2004;
7. A letter from doctor [REDACTED] of the Cambridge Health Alliance, in which she stated that the applicant has been seen regularly at the facilities for more than five years;
8. A copy of a lease agreement for the premises known as [REDACTED] Massachusetts, dated August 7, 2005, and bearing the applicant's name as tenant;
9. Copies of rent receipts dated February through September of 2002, and bearing the applicant's name as tenant at [REDACTED];
10. A copy of an IRS Form W-2, Wage and Tax Statement for the 2002 tax year, from the Haviland Candy Company, and bearing the applicant's name as employee; and,
11. Copies of IRS Form W-2, Wage and Tax Statements for the 2003 and 2004 tax years, from the NECCO, and bearing the applicant's name as employee.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 10, 2006.

On appeal, the applicant reasserts his claim of eligibility for TPS and resubmits the August 2005 letter from NECCO.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite time periods. The applicant states on appeal that he was employed by NECCO as [REDACTED] and that the company recognizes him as both in their letter by stating that the applicant began employment with the company in 1999. Contrary to the applicant's claims, the letter writers did not mention the name [REDACTED] in their writings. It is further noted that although the employers do not indicate a break in the applicant's employment; the applicant admits to leaving the United States approximately eight months to a year after he began working, and returning, as he has stated, shortly after February 14, 2001. 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.

Although the affiants stated in their affidavits (See numbers 1, 2, and 3 above) that they have known the applicant to be present in the United States since before February 13, 2001, there has been no corroborative evidence to substantiate their assertions. Without corroborative evidence, the 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 specifically described in 8 C.F.R. §244.9(a)(2)(i) and (v).

All other evidence provided by the applicant is dated subsequent to the requisite time periods and are insufficient to show that the applicant has been in the United States since February 13, 2001. 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.