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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 15 2007
[EAC 01 226 52551]

IN RE: Applicant: [REDACTED]

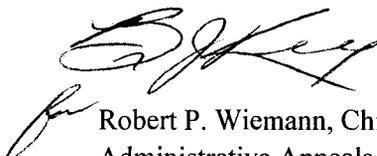
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, 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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant has established his presence and residence in the United States by the documents he has submitted. The applicant also provides additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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 section 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 physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, 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 by the Secretary of the Department of Homeland Security, with the latest granted until March 9, 2009, 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 July 9, 2001. On April 30, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided statements from [REDACTED], and [REDACTED].

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant has established his presence and residence in the United States based on the documents he has provided. According to counsel, because the applicant was without proper identification, he could not provide the evidence requested from him, including phone, employment, hospital or school records. Counsel states that the applicant's wife has been granted TPS. Counsel also requests that the TPS application be reopened for humanitarian reasons. The applicant also provides a statement from [REDACTED], as well as 2001 and 2002 tax information and documentation.

██████████ President of Cirello Landscape Designs, Inc. in Huntington, New York, states that his company employed the applicant in a supervisory position since July 2000. However, the statement 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).

8 C.F.R. § 244.9(b) provides that letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

- (A) Aliens address(es) at the time of employment;
- (B) Exact period(s) of employment;
- (C) Period(s) of layoff; and
- (D) Duties with the company

██████████ statement is not in affidavit form, signed and attested to. Furthermore, it does not provide the address where the applicant resided during the period of his employment. The applicant submitted a W-2 Wage and Tax Statement indicating that he was employed at Cirello Landscape and Design Ltd. in the year 2002, however, he did not provide a W-2 form for the year 2001 from this employer. Furthermore, it is noted that the applicant indicated on the Schedule C, Profit or Loss From Business, attached to his 2001 U.S. Individual Income Tax Return, that he was self-employed. 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 discrepancy concerning his employment in the year 2001. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish continuous residence since February 13, 2001, or his continuous physical presence from March 9, 2001 to the filing date of the application.

The affidavit from ██████████ Pastor, Spanish Evangelical Church of the Assemblies of God, 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, and merely states that the applicant "has been with us since 2001 and not left the country since then." The applicant also submitted affidavits from ██████████ and ██████████ who state that they have known the applicant since July 2000, and know that he has not left the United States, however, the affidavits are not supported by any evidence. The affidavits from ██████████ and ██████████ are in a "fill-in-the-blank" format, and are of little probative value. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. The applicant has, therefore, failed to establish that he has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Counsel also states that the applicant's wife was granted TPS. While the regulations may allow spouses of aliens who are TPS-eligible to file applications after the initial registration period, these regulations do not relax the requirements for eligibility for TPS. The applicant is not eligible for TPS because the applicant has

not established his qualifying continuous residence and continuous physical presence. Counsel and the applicant's statements made on appeal have been considered. Nevertheless, there is no waiver available, even for humanitarian reasons, of the requirements stated above.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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.