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U.S. Citizenship
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Services

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FILE:

Office: Vermont Service Center

Date: FEB 26 2008

[EAC 01 188 54352]

[APPEAL EAC 06 190 50979]

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.

A handwritten signature in black ink, appearing to read "R. 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 claims to be a 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 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.

On appeal, the applicant asserts that he is eligible and submits evidence in support of his assertions.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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).

On July 29, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. The record does not show a response to the director's request.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 7, 2003. A subsequent appeal was remanded to the director by the AAO, and the director again denied the application on May 8, 2006, for failure to establish residence and continuous presence during the required periods.

On appeal, the applicant reasserts his claim and submits evidence in support. Specifically the applicant has submitted state issued identification, cell phone service records, letters from employers, tax returns, letters from affiants, money transfer receipts, bank records, various service invoices, and documentation from landlords. This evidence generally tends to support the applicant's continuous residence and continuous physical presence during from the date of filing, April 24, 2001. There is a significant gap in the applicant's evidence covering the period from February 13, 2001, through April 24, 2001. The record contains the following evidence relevant to this period in question:

1. Letter, dated May 13, 2006, from [REDACTED], stating the applicant rented a room from him from 2000 – 2001.
2. Copy of a cashed negotiable instrument, dated December 8, 2000, paid to the order of the applicant.
3. Three handwritten money order receipts, dated November 25, 1999, December 23, 1999, November 30, 1999.
4. Copy of a commonwealth of Virginia identification card, issued April 5, 1999.

The letter from [REDACTED] is ambiguous, and fails to clearly state the period of time he is attesting to the applicant's residence and presence. As an example, the affiant testifies that the applicant rented an address at [REDACTED] Vienna, Virginia. This is not the address listed for the applicant during this period by other evidence in the record, including the Virginia state identification card. The accuracy of [REDACTED] recollection is questionable, thus, this letter provides little probative evidence of the applicant's qualifying residence and continuous physical presence.

The cashed check listed at item No. 2 above appears to be authentic, and indicates that the applicant signed the check over to [REDACTED]'s Warehouse on December 12, 2000.

Due to their susceptibility to fraud the money order receipts provided are not sufficiently credible as evidence to support the applicant's assertions. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence is sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since December, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. 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 Virginia identification card appears to be authentic, but the AAO would note that the address is inconsistent with the applicant's other assertions for that period. In addition, it states the card was issued on April 5, 1999, yet the applicant claims he did not arrive in the United States until December 1999. This casts doubt on the authenticity of the identification card, or in the least indicates that the applicant has either misrepresented his address to Virginia or his date of arrival in the United States to CIS. In either case the evidence is inconsistent, and thus not sufficiently credible to support the applicant's assertions. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Viewed as a whole, the evidence in the record supporting the applicant's presence during the period in question is not sufficient. Although the cashed check might indicate the physical presence of the application for the period December 8, 2000, (date the check was issued) to December 12, 2000, (date the applicant endorsed the check), it is not sufficiently probative to establish the applicant's continuous residence and

continuous physical presence for the three month period in question. It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies 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.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States for the period covering February 13, 2001, through the date of filing, April 24, 2001. The unavailability of evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(9). He has not, thereby, established 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.

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.