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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI

[REDACTED]

FILE:

[REDACTED]
[EAC 03 065 51382]

Office: VERMONT SERVICE CENTER

Date:

APR 12 2005

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.

Cindy N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 application due to abandonment on March 23, 2004, because the applicant failed to appear to be fingerprinted in accordance with 8 C.F.R. § 103.2(b)(a) and (b)(9).

On April 14, 2004, the applicant filed a motion to reopen the denial of his application. On motion, the applicant stated that he failed to appear to be fingerprinted because he never received the Form I-797C, Fingerprint Notification, instructing him to appear at the Application Support Center in Alexandria, Virginia, on July 18, 2003, to be fingerprinted.

On June 25, 2004, the director reopened the matter and issued a new Form I-797C, Fingerprint Notification, instructing the applicant to appear at the Application Support Center in Alexandria, Virginia, to be fingerprinted on July 9, 2004. The applicant appeared to be fingerprinted as instructed on that date.

On November 24, 2004, 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, 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 is eligible for temporary protected status 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 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, or

- (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. 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 most recent granted until September 9, 2006, 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 September 21, 2004, the applicant was requested to submit additional evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted the following:

1. a letter from [REDACTED] stating that she has known the applicant since June 8, 2001;
2. a letter from [REDACTED] stating that he has known the applicant since February 2001;
3. a letter from [REDACTED] stating that he has known the applicant since March 2001; and,
4. a letter from [REDACTED] stating that he has known the applicant since August 25, 2001.

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

On appeal, the applicant states that he is submitting additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant submits the following:

1. an affidavit dated December 4, 2004, from [REDACTED] attesting that the applicant was renting a room from him at [REDACTED] from March 1, 2001 to February 28, 2002, and further attesting that the applicant moved back to that apartment on November 1, 2002, and was still residing at that address as of the date of the affidavit;
2. a photocopy of a residential deed of lease indicating that [REDACTED] would share an apartment located at [REDACTED] beginning on March 1, 2001;

3. an affidavit dated December 4, 2004, from [REDACTED] stating that the applicant was renting a room at [REDACTED] from March 1, 2002 to September 30, 2002; and,
4. a receipt from [REDACTED] in Arlington, Virginia, indicating that [REDACTED] purchased a stereo system using a credit card on January 5, 2001;

The residential deed of lease is not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods because the applicant's name does not appear on the lease. The letters from [REDACTED] and [REDACTED] and the affidavits from [REDACTED] and [REDACTED] are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The regulation at 8 C.F.R. § 244.9(a)(2) does not list affidavits of witness as acceptable evidence of continuous residence and continuous physical presence in the United States. While 8 C.F.R. § 244.9(a)(2)(vi)(L) states that an alien may submit "any other relevant document" in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily 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 November 24, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters and affidavits; however, no such evidence has been provided. Further, the applicant's name and the date of purchase on the receipt from Venus Stereos & TV appear to have been altered. The applicant has not provided any explanation for this apparent alteration. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner 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).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). 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.

Beyond the decision of the director, the applicant did not file his Form I-821, Application for Temporary Protected Status, until September 11, 2002, two days after the expiration of the initial registration period for Salvadorans. The applicant has not provided any evidence to establish that he is eligible for late initial registration under the provision of 8 C.F.R. § 244.2(f)(2). Therefore, the application also must be denied for this reason.

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.