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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Vermont Service Center

Date:

NOV 03 2008

[EAC 08 011 71041]

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 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, counsel states that an interview should have been conducted in the applicant's case because documentary evidence was not available. Counsel further asserts that the director, in this case, does not contest the credibility or reliability of the corroborative evidence submitted, and the decision was based solely on an assumption by the director.

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. The designation of TPS for El Salvadorans has been extended several times, 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 March 17, 2008, 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 to the date of filing his TPS application. The director further noted that the applicant had submitted sufficient evidence for his continuous physical presence for the years 2005 to 2006; however, the director determined that additional evidence was needed for the years 2001 to 2004, and 2007. The applicant, in response, provided the following documentation:

1. A copy of his birth certificate and an English translation;
2. Copies of his Salvadoran passport;
3. A letter dated July 12, 2007, from [REDACTED], President of ExecuPark, Incorporated, verifying that the applicant has been an employee since December 8, 2004;
4. An undated letter from [REDACTED], Chief Executive Officer of Hotel Britton, attesting that he had been a personal friend of the applicant for over ten years;
5. A copy of a doctor's note dated May 12, 2004, from Centro Medico Urgent Medical Center;

6. A copy of a money transfer receipt from Bancomercio, dated December 27, 2004;
7. A copy of a money transfer receipt from BancoSal, Inc., dated February 25, 2004;
8. A copy of a Gold MasterCard form with an offer expiring on November 14, 2003;
9. Copies of Form(s) 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents for the years 2005 and 2006;
10. Copies of Form(s) W-2, Wage and Tax Statement, for the years 2005 and 2006;
11. A letter dated April 7, 2008, from [REDACTED] Pastor of St. Bruno's Church, attesting that the applicant lives at [REDACTED], San Francisco, CA 94110, and that the applicant has attended Mass since the year 2000; and,
12. A letter from [REDACTED] attesting that the applicant rented a room from him from November of 2001 to February of 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 5, 2008.

On appeal, counsel states that the director deprived the applicant of a full and fair opportunity to present evidence in support of his TPS application by not scheduling the applicant for an interview prior to denying his application.

8 C.F.R § 244.8 states that, "the applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility....." In addition, 8 C.F.R. § 244.9(1) further states that, ".....A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality..." The applicant, in this case, was provided an opportunity to submit additional evidence when the director issued a Notice of Intent to Deny (NOID) his TPS application on March 17, 2008.

The letter from [REDACTED] is generic in nature, incomplete, and fails to provide the basic information required to constitute an employer's letter. The letter does not include the applicant's address(es) at the time of employment or his duties with the company. This document provides little evidentiary weight for the applicant's assertions of continuous residence and continuous physical presence.

The letter from [REDACTED] submitted in response to the director's NOID states only that he "had known the applicant for over ten years," and thus is not sufficiently relevant to support the applicant's assertions of eligibility. **Even in the light most favorable to the applicant this letter lacks sufficient detail and context, and does not cover the entire required period because [REDACTED] does not state the date and time of his acquaintance with the applicant.** While 8 C.F.R. § 244.9(a)(2) specifically states that additional documents such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone 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 October 13, 1993. It is reasonable to expect that he would have some other type of contemporaneous evidence to support his claim. However, no such evidence has been provided. The remaining evidence submitted by the applicant is not sufficiently probative or credible because it does not cover the entire required periods.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. He has, thereby, failed to establish 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.