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



U.S. Citizenship
and Immigration
Services

M1

FILE:

[REDACTED]
[EAC 01 205 54922]

Office: Nebraska Service Center

Date: DEC 08 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 his qualifying residence and physical presence in the United States during the requisite time periods. The director also indicated that the applicant failed to establish his eligibility for TPS late registration.

On appeal, the applicant submits documentation in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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).

Along with his application for TPS, the applicant submitted the following documentation:

- 1) An English translation of his El Salvadoran birth certificate;
- 2) A Western Union money transfer receipt dated September 13, 2000; and,
- 3) Two Urgente Express receipts dated August 23, 2000 and September 29, 2000.

On November 4, 2003, the applicant was requested to submit a copy of his current photo identification and a copy of his birth certificate or passport. The applicant was also requested to submit evidence establishing his date of entry to the United States as of February 13, 2001, his "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 the following documentation:

- 4) A copy of his Indiana Operator Driver License issued on May 24, 2002;

- 5) Copies of his Employment Authorization cards valid from June 26, 2001 to September 9, 2003;
- 6) Copies of his Social Security card;
- 7) A copy of his El Salvadoran birth certificate along with an English translation;
- 8) A copy of a letter dated December 8, 2003, from Mr. [REDACTED] who stated that the applicant has been in the United States since July 2000;
- 9) A copy of a letter dated December 8, 2003, from Mr. [REDACTED], who stated that the applicant lived at [REDACTED] in Woodbridge, Virginia, from October 1, 2000 to August 10, 2001;
- 10) A copy of an undated letter from Mr. [REDACTED] who stated that the applicant lived with him at [REDACTED] Street in Manassas from July 2000 to September 2000;
- 11) Copies of his Virginia State Income Tax Return, IRS Income Tax Return, and Form W-2, Wage and Tax Statement, for the year 2001;
- 12) A Western Union money transfer receipt dated March 27, 2001; and,
- 13) An Urgente Express receipt September 29, 2000.

The director determined that the applicant failed to establish his qualifying residence and physical presence in the United States during the requisite time periods. The director also denied the application because the applicant failed to provide sufficient evidence to establish his eligibility for TPS late registration. Therefore, the director denied the application on March 2, 2004.

On appeal, the applicant provides the following documentation in support of his eligibility for TPS:

- 14) An employment letter dated March 9, 2004, from Mr. [REDACTED] President of [REDACTED] [REDACTED] who stated that the applicant had worked for him from August 21, 2000 to December 14, 2001;
- 15) An earnings statement from [REDACTED] reflecting a pay period end date of November 4, 2001; and,
- 16) A Notice of Action dated March 24, 2004, from the Service.

A review of the record of proceedings reflects that the applicant filed this TPS application on June 2, 2001, during the initial registration period. It appears that the director erred in his conclusion regarding the applicant's eligibility under TPS late registration. The applicant had filed a timely initial TPS application which is now on appeal.

The employment affidavit from Mr. [REDACTED] in No. 14 above, 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). Specifically, Mr. [REDACTED] does not provide the address where the applicant resided during the period of his employment. In addition, the single earnings statement from Walker Seal Companies in No. 15 above, falls after the beginning of the requisite time periods for continuous residence and continuous physical presence. In addition, Mr. [REDACTED] in No. 10 above, states that the applicant resided with him at [REDACTED] in Manassas, from July 2000 to September 2000. The Urgente Express receipts, as detailed in Nos. 3 and 13 above, and the Western Union money transfer receipts, as detailed in No. 2 above, however, indicate that the applicant claimed to have lived at [REDACTED] in Woodbridge, Virginia during the same period; thus, questioning the credibility of the

statements provided by Mr. [REDACTED]. Further, the statement provided by Mr. [REDACTED] regarding the applicant's residence with him at [REDACTED] Court in Woodbridge, Virginia from October 1, 2000 to August 10, 2001, is not supported by corroborative evidence. It is noted that the applicant claimed on the Western Union money transfer receipt dated March 27, 2001, as detailed in No. 12, that he resided at [REDACTED] in Fairfax, Virginia. 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 discrepancies noted above regarding his residence in the United States. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy the continuous residence and continuous 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 on these grounds 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 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.