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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: JAN 13 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.

Robert P. Wiemann, Director
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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The director also denied the application because the applicant failed to provide two photographs.

On appeal, the applicant submits 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, 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 pubic 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.

(g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 applicant did not provide any evidence in an attempt to establish his qualifying continuous residence and physical presence in the United States with the Form I-821, Application for Temporary Protected Status.

On May 19, 2003, the applicant was requested to submit 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. The applicant, in response, provided the following:

1. an ADP pay statement dated March 30, 2001, indicating that the applicant was paid $210 by State Warehouse, address not listed, for the pay period ending March 29, 2001, with a yearly salary to date of $210.00;

2. an ADP pay statement dated April 6, 2001, indicating that the applicant was paid $273.00 by State Warehouse for the pay period ending April 5, 2001, with a yearly salary to date of $1,251.44; and,

3. an ADP pay statement dated April 13, 2001, indicating that the applicant was paid $229.69 by State Warehouse for the pay period ending April 12, 2001, with a yearly salary to date of $2,856.01;

The director determined that the applicant had failed to submit sufficient evidence to continuous residence and continuous physical presence in the United States during the requisite time frames, and denied the application on July 16, 2003.

On appeal, the applicant provides two photographs. Therefore, the applicant has overcome this ground for denial of the application.

The applicant also provided the following evidence in an attempt to establish his qualifying continuous residence and physical presence in the United States:

1. a notarized letter from [redacted] dated August 6, 2003, stating that the applicant has been a tenant a [redacted] since the year 2000, and that Mr. [redacted] pays a monthly rent of $800.00; and,

2. an affidavit from [redacted] stating that she has personally known the applicant since 2000.

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 three ADP statements submitted by the applicant are not sufficient to establish his qualifying continuous residence and physical presence in the United States. The pay statement dated April 6, 2001, lists the applicant's year earnings to date as $1,251.44, but the pay statement

dated March 30, 2001, lists both the applicant's monthly pay and his yearly earnings to date as $210.00. Since the applicant purportedly earned $273.00 in the pay period ending April 5, 2001, it is not possible that his yearly earnings to date would increase from $210 to $1,251.44 in one week. Similarly, the applicant purportedly earned $229.69 in the pay period ending April 12, 2001, with yearly earnings to date of $2,856.01. It is not possible that the applicant's yearly earnings to date increased from $1,251.44 to $2,856.01 in one week, since he only earned $229.69 in that week. The applicant has not provided any explanation for these discrepancies in his purported pay statements. 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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Additionally, the affidavit from Ms. is not sufficient establish the applicant's qualifying continuous residence and physical presence in the United States. Ms does not provide the exact dates of her acquaintance with him or indicate how she knows the applicant, nor has she provided the address(es) at which he resided since she has known him. The applicant claims to have lived in the United States since 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the affidavit from Ms. 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). 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.

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.