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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:



Office: VERMONT SERVICE CENTER

Date: JAN 24 2005

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.

Robert P. Wiemann

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 determined that the applicant failed to establish he had continuously resided in the United States since February 13, 2001. The decision was based, in part, on the applicant's assertion that he had been employed under an alias. The director, therefore, denied the application.

On appeal, the applicant asserts that he made a mistake because he did not initially indicate that he used another name [REDACTED] on his application.

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 as designated by the Attorney General 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 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, 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 term *continuously physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 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).

On April 25, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing of the application. The applicant was also requested to submit a photo identity document. The applicant, in response, provided statements from [REDACTED] and [REDACTED]. The applicant also provided a copy of two hand-written receipts and pay stubs in the name of [REDACTED].

In her statement, Ms. [REDACTED] stated that the applicant worked at [REDACTED] under the name of [REDACTED] and that he erred in not indicating the use of this name on his application. However, Ms. [REDACTED] has not demonstrated that her knowledge of the applicant's employment, under the name of [REDACTED] is independent of her personal relationship with the applicant. If this knowledge is based primarily on what the applicant told her about his employment, then her statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. In addition, Ms. [REDACTED] has failed to provide any corroborative documentation in support of this claim.

Ms. [REDACTED] stated that the applicant has been renting a room from her since January 15, 2001. This statement also lacks supporting documentation. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The receipts indicate the applicant's presence in the United States on January 11, 2001 and February 5, 2001 respectively. However, they fail to establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period.

The pay stubs are dated February 2, 2001, February 9, 2001, February 16, 2001, March 25, 2001, April 2, 2001, April 8, 2001, and April 22, 2001. The pay stubs establish the presence of [REDACTED] in the United States during the periods represented by the pay stubs. However, the applicant has failed to establish that he and [REDACTED] are one and the same person. Furthermore, even if the applicant had established that he and [REDACTED] are one and the same, there is no evidence that the [REDACTED] identified on the pay stubs is [REDACTED] Miranda. Therefore, the evidence is of no probative value.

The applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that he failed to indicate on his employment authorization application that he used the name [REDACTED]. The applicant resubmits evidence in the name of [REDACTED] in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period. He also submits a Form 1099G, from the Comptroller, State of Maryland, addressed to a [REDACTED] at the same address as his residence. However, as discussed above, the applicant has failed to establish that he and [REDACTED] are one and the same and that the evidence submitted pertains to him. The applicant submitted no evidence from his employer indicating his employment under the alias and the acknowledgement of the applicant's true identity and his presence in the United States during the requisite time periods.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for residence and physical presence 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.