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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: **JAN 24 2005**

[SRC 02 103 54576]

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 for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 continuously resided in the United States since February 13, 2001.

On appeal, the applicant asserts that he has resided in the United States since February 13, 2001, and submits additional evidence in support of the appeal.

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 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.

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. 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on February 12, 2002.

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).

In a Notice of Request for Evidence dated April 12, 2004, the applicant was requested to submit evidence establishing that he arrived in the United States prior to February 13, 2001, and evidence of his continuous physical presence since March 9, 2001, in the United States.

In response to the request for additional evidence, the applicant submitted the following documentation:

1. An affidavit from [REDACTED] dated May 16, 2004, stating that the applicant lived with him from January 30, 2000 through May 15, 2002, and did not pay rent due to economic reasons during that time period;
2. A pay stub in the applicant's name from [REDACTED] Marietta, Georgia, for the period of December 17 through December 23, 2001;
3. Internal Revenue Service (IRS) Forms 1040A, U.S. Individual Income Tax Return, for 2001, 2002, and 2003;
4. IRS Forms W-2, Wage and Tax Statement, from three different employers for the year 2002, and from two different employers for the year 2003;
5. A letter dated March 30, 2001, from the General Manager, [REDACTED] Smyrna, Georgia, stating that the applicant has been doing business with their company since 2000;
6. State of Georgia Form 500, Individual Income Tax Return, for 2001;
7. Copies of generic money order and post office receipts;
8. A cash receipt in the applicant's name dated November 20, 2001; and,
9. A United States Postal Service Express Mail receipt bearing the applicant's name as the sender, dated February 10, 2001.

The director determined that the applicant had failed to submit evidence to establish that he had continuously resided in the United States since February 13, 2001, and denied the application on May 27, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

1. A Georgia Identification Card, with expiration date November 21, 2005;
2. A copy of his Employment Authorization Card (EAD), category C19 (pending TPS application), valid from September 4, 2003 through September 9, 2005;
3. Pay stubs in the applicant's name from [REDACTED] Marietta, Georgia, for various periods between July and September 2001, and,
4. Resubmitted copies of items Number 1 through 5 above.

It is noted that the IRS Forms 1040A for 2001, 2002, and 2003, list the applicant's address as his current address. This information conflicts with the affidavit from [REDACTED] dated May 16, 2004, stating that the applicant lived with him from January 30, 2000 through May 15, 2002, at [REDACTED] Mableton, Georgia. The record also includes a re-registration application signed by the applicant on September 10, 2002, and filed with CIS on November 8, 2002, in which the applicant indicated he then resided in Westbury, New York. The IRS forms for the year 2002, however, give the applicant's address and that of his employers as being located in Georgia. Further, the applicant provided a photocopy of his social security card and listed that number on his re-registration applications. While that social security number appears on all of the IRS information for the year 2003, it is noted that the 2002 IRS Forms W-2 from two of the three employers provide a different social security number. For the year 2001, the [REDACTED] Marietta, Georgia, pay stubs also reflect a different social security number than appears on the applicant's social security card. In addition, the Wilkerson Construction Company pay stub for the period ending July 29, 2001, indicates that the cumulative year-to-date totals are equivalent to the pay and hours of work during that specific period, indicating that prior to July 29, 2001, the applicant was not employed by that company. It also is noted that the translation of the applicant's birth

certificate indicates that it was issued on December 4, 1948, while the birth document states that the certificate conforms to the original and was issued at la Seccion del Registro del [REDACTED] on April 23, 2001. The applicant did not account for how he obtained this document after his stated date of entry into the United States.

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 use of different social security numbers, the apparent fraudulent documentation, or to explain the other inconsistencies.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(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 also has failed to establish his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b).

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.