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



U.S. Citizenship
and Immigration
Services

M

[Redacted]

FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date: **JAN 24 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.

Cindy N. Gomez for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The applicant filed his initial TPS application with the Texas Service Center of the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS). Following the applicant's response to the Notice of Intent to Deny, the Director, Texas Service Center, forwarded the matter to the Tampa INS Office, referring the applicant for interview. The TPS application was subsequently denied.

The applicant filed an appeal. The appeal was subsequently forwarded from the Tampa, Florida, office, directly to the Administrative Appeals Office (AAO). On May 1, 2003, the AAO returned the applicant's appeal, noting that the AAO does not accept fees and that the appeal must be properly filed with the office that made the initial decision. The appeal was subsequently received at the Texas Service Center on June 3, 2003. The matter is now before the AAO on appeal. The appeal will be dismissed.

It is noted that the Form I-290B, Notice of Appeal, is very clear in indicating that the appeal is not to be sent directly to the AAO; but, rather, to the "office which made the unfavorable decision." In this case, the applicant, in fact, initially correctly mailed his appeal to the office that had rendered the unfavorable decision. Due to the circumstances of this matter, the appeal will be treated as having been timely filed.

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 district director denied the application because the applicant failed to establish he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a statement. The applicant does not submit any 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 INS, now CIS, on September 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).

On January 29, 2003, 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. The applicant, in response, provided the following documentation:

1. Photocopies of two pay stubs from O'Donnell Landscapes, Inc. dated in September 2000;
2. A billing statement from Family Health Centers of Southwest Florida, Inc., Fort Myers, Florida; and,
3. A Rental/Lease Agreement for a residence at [REDACTED] Fort Myers, Florida.

The service center director forwarded the record to the Tampa INS Office. The Tampa sub-office, Florida, determined that the applicant had failed to submit sufficient credible evidence to establish his continuous physical presence in the United States during the requisite period and denied the application on March 25, 2003.

On appeal, the applicant reasserts that he entered the United States in the year 2000. He requests that his case be reviewed carefully. The applicant does not submit any additional evidence in support of the appeal.

It is noted that the pay stubs from O'Donnell Landscapes, Inc., do not provide any verifiable information about the company or the employee, and the dates appear to have been altered. The billing statement from Family Health Centers of Southwest Florida, Inc., Fort Myers, Florida, has clearly been altered; the bill provides the applicant's address as his current address, while other documentation indicates he did not live at this address until the year 2003, and the dates of service have been pasted on top of the sheet of paper. The rental/lease agreement likewise has been altered and indicates that the lease terminated prior to the commencement date; the document states that the lease is "for the period commencing on the [sic] June 1, 2000, and thereafter until the [sic] May 31, 2000, at which time this Agreement is terminated." In addition, with his initial application the applicant submitted a pay stub from Andrew Kleinberger, Inc., Bonita Springs, Florida, which also appears to have been altered. Further, this pay stub is dated in September 2000, during the time same timeframe as the pay stubs listed at Number 1 above.

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 these alterations and discrepancies.

The applicant has not submitted sufficient credible evidence 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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient 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). Therefore, the application must also be denied for this reason.

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.