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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

MI

[REDACTED]

FILE:

[REDACTED]
[EAC 01 244 55675]

Office: VERMONT SERVICE CENTER

Date: JUL 29 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:

[REDACTED]

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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts that he has been in the United States since March 5, 2000, and is therefore, eligible for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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.
- (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.

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 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 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 October 31, 2002, 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. A copy of a United States Postal Service post card bearing the applicant's name and New Jersey address with a partial stamp date of 2001;
2. A receipt from Inter Discount Computers & Electronics, dated November 21, 2001, and bearing the applicant's name and New Jersey address;
3. A receipt from [REDACTED] dated October 25, 2002 and bearing the applicant's name;
4. A receipt from Ria Express, dated July 18, 2002, and bearing the applicant's name as sender along with his New Jersey address;

5. An affidavit from [REDACTED] dated December 13, 2002, in which he states that he resides at [REDACTED] 4th Street, [REDACTED] Bergenfield, New Jersey, that has rented a room at that address to the applicant since March 5, 2000, and that the applicant pays \$250.00 per month in rent; and
6. An affidavit from [REDACTED] dated December 23, 2002, in which he states that the applicant has worked for him as a gardener and painter during the summers of 2001 and 2002, and during the fall of 2002 earning nine to ten dollars (\$9-\$10) per hour.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 17, 2004.

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

7. A copy of the applicant's Employment Authorization card dated September 27, 2003, to March 9, 2005; and
8. A copy of the applicant's IRS Form 1040, U.S. Individual Tax Return plus attachments for the 2001 tax year.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to August 6, 2001. In the affidavit by [REDACTED] (No. 5 above) he states that the applicant has lived with him, renting a room within his apartment and paying \$250.00 per month since March of 2000. However, there has been no corroborating evidence submitted by the applicant to substantiate this claim. Likewise, the employment affidavit from Karnig Thomasian 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, the affidavit does not bear the affiant's company seal nor is it written on company stationery. Further, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location of his business, or verify that the business was even located inside the United States.

The Inter Discount Computers & Electronics receipt (No. 2 above) is not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents may be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since March of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support this document; 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).

On appeal, the applicant submitted a copy of an IRS Form 1040 for the 2001 tax year. However, the AAO notes that the form is unsigned and dated March 30, 2004. In contrast with the affidavit of employment submitted, it is indicated in the applicant's tax records that he is "self-employed" and that he did not receive any salary or wages during the 2001 tax year. Further, in contrast with the affidavit of residency, the applicant's tax records indicate that he resides at [REDACTED] Street, Apartment [REDACTED] Bergenfield, New Jersey. 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 inconsistencies found in the record. The AAO also notes that there is no evidence to show that the applicant's tax records were ever filed with the IRS. The remaining evidence fails to document the applicant's continuous residency or continuous physical presence in the United States during the requisite periods.

The applicant has failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.