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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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FILE:

[REDACTED]

Office: Vermont Service Center

Date: JUN 20 2005

[EAC 02 259 51705]

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

On appeal, the applicant submits documentation in support of his claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 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 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 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 7, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant submitted some evidence in an

attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant had failed to establish his eligibility for TPS and denied the application on March 10, 2004.

On appeal, the applicant submits the following documentation: a copy of an IRS Form W-7(SP), dated February 5, 2000; a letter dated January 23, 2004, from Mr. [REDACTED], who stated that he has known the applicant since April 2000; an employment letter dated January 26, 2004, from Ms. [REDACTED] owner of [REDACTED] in Plainfield, New Jersey, who stated that the applicant has been working for her restaurant since September 2000; an employment letter dated March 12, 2004, from Ms. [REDACTED] Office Manager of Federal Union, in Boston, Massachusetts, who stated that the applicant was an employee of her company in the year 2000; a copy of an Internal Revenue Service, Form W-2, Wage and Tax Statement, for the year 2000; a copy of discharge instructions from the Muhlenberg Regional Medical Center in Plainfield, New Jersey, indicating a return to work date of December 10, 2000; and a copy of a note dated December 20, 2000, from Dr. [REDACTED] who stated that the applicant had been under his care for knee pain.

In his letter, Mr. [REDACTED] states that he has known the applicant since April 2000; however, he does not indicate whether their acquaintance was in the United States. In addition, the employment letters from Ms. [REDACTED] and Ms. [REDACTED] have little evidentiary weight or probative value as these letters do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, Ms. [REDACTED] and Ms. [REDACTED] do not provide the address where the applicant resided during the period of his employment. It is noted that while Ms. [REDACTED] stated in her letter that the applicant worked for her at her restaurant in Plainfield, New Jersey, Ms. [REDACTED] stated that the applicant worked for her company in Boston, Massachusetts during the same time period of the year 2000. In addition, the IRS Form W-2 document may indicate that the applicant was in the United States during the year 2000. However, this document does not provide the actual dates of employment. It is also noted that the prepared date at the bottom of the discharge instructions from Muhlenberg Regional Medical Center appears to have been altered to reflect an earlier date of "December 09, 2000." The original date appears to have been "December 09, 2003." The applicant claimed on his applications for temporary protected status and employment authorizations to have entered the United States in September 2000. However, the Form W-7(SP) submitted by the applicant on appeal indicates that he signed the form on February 5, 2000. It is highly unlikely that he would have signed this form before his claimed arrival to the United States.

Also, the record contains a letter dated January 24, 2004, from Mr. [REDACTED] of the Inglesia La Restauracion Elin, in Honker, New York, who stated that the applicant had been a member of his church since May 2000. The letter from Mr. [REDACTED] 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)(v). Specifically, he does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. It is further noted that Mr. [REDACTED] indicated that the applicant had been attending his church since May 2000; however, the applicant claimed he did not enter the United States until September 2000, four months later. 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 discrepancies noted above.

Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy the continuous residence and continuous 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 on this ground 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.