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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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MM

[REDACTED]

FILE:

[REDACTED]  
[LIN 02 098 51983]

Office: NEBRASKA SERVICE CENTER

Date:

JUN 23 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, Nebraska 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for the applicant submits a statement and additional evidence.

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 § 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.
- (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.

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. Subsequent extensions of the TPS designation has been granted, with the latest granted until September 9, 2006, 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 applicant filed his Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on January 28, 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant initially submitted a letter dated January 21, 2002, from [REDACTED], Owner of Park Square Subway, Inc., in Burnsville, Minnesota, stating that the applicant has been employed by his company "since July of 2000."

On September 26, 2002, the applicant was requested to submit evidence establishing his date of entry into the United States, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following:

1. an undated letter from [REDACTED] Owner and President of Park Square Subway, Inc., in Burnsville, Minnesota, stating that the applicant has been employed by Park Square Subway since July of 2000. [REDACTED] further stated that the applicant was an "independent contractor" cleaning floors and equipment after closing time at his Brooklyn Park and Plymouth Subway locations, and indicated that "[d]uring this time Oscar was paid for his work with a corporate check, but he starting in January of 2001, the applicant began working in his Subway stores as an "on the payroll employee;"
2. a photocopy of a packing slip from Gateway in North Sioux City, South Dakota, shipped with a Gateway computer ordered by the applicant on May 15, 2001;
3. a photocopy of a MoneyGram money transfer receipt dated October 30, 2001;
4. a photocopy of a Minnesota Identification Card Application and cash receipt from the Blaine License Center in Blaine, Minnesota, dated December 1, 2001;
5. a photocopy of a Form I-797C notice acknowledging receipt of the applicant's Form I-765, Application for Employment Authorization, at the Nebraska Service Center on November 4, 2002;
6. an undated letter from [REDACTED] of Park Square Subway, Inc., stating that the applicant has been employed with Park Square Subway "since July of 2000." [REDACTED] listed the following pay dates: January 16, 2001; January 30, 2001; February 13, 2001; February 27, 2001; March 13, 2001; March 27, 2001; April 10, 2001; April 24, 2001; May 8, 2001; May 22, 2001; and June 6, 2001."
7. a photocopy of a Gateway Easy Pay Plan notice dated October 1, 2001, indicating his credit line, account number, and estimated payment term;
8. photocopies of Gateway billing statements dated June 21, 2001; July 21, 2001; August 22, 2001; September 20, 2001; and November 19, 2001;

9. photocopies of AT&T Broadband statements of service dated November 7, 2001; December 7, 2001; and January 7, 2002; and,
10. photocopies of Spring PCS billing statements dated February 28, 2002; March 28, 2002; April 28, 2002; May 30, 2002; June 28, 2002; July 29, 2002; and September 29, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 14, 2003.

On appeal, counsel for the applicant states that the applicant is unable to provide contemporaneous documentation for the period prior to February 13, 2001, because the applicant "did not use false documents." Counsel contends that the applicant "should not be penalized for NOT having used false documents on or by February 13, 2001." Counsel submits the following:

11. an affidavit from [REDACTED] of Park Square Subway stating that the applicant worked for his Subway shops as an "independent contractor cleaning floors and equipment after closing time" between July 2000 and January 2001 and was paid in cash. [REDACTED] lists the applicant's hours worked, gross pay, and pay dates between January 16, 2001 and January 18, 2002. [REDACTED] indicates that the applicant was paid in cash throughout the period from January 1, 2001 through January 18, 2002, and subsequently received his first paycheck through PayChex service on February 1, 2002."
12. an affidavit dated April 24, 2003, from [REDACTED], stating that the applicant is his cousin and that the applicant spent the Christmas and New Year holiday of 2000-2001 at his residence in Yonkers, New York, and "left New York January 2, 2001;" and,
13. an affidavit dated April 25, 2003, from [REDACTED] stating that he has known the applicant since December 2000, and that the applicant went to Minehaha Falls with him "before February 13, 2001. [REDACTED] provided a photograph of four individuals at Minehaha Falls, identifying one individual in the photo as himself and one as the applicant.

The applicant has submitted sufficient evidence to establish continuous residence and continuous physical presence in the United States since May 15, 2001. The only evidence of the applicant's residence and physical presence in the United States prior to that date are the employment letters from [REDACTED]. In his first and second letters, [REDACTED] stated that the applicant was paid "with a corporate check" between July 2000 and January 2001, and became an "on the payroll" employee in January 2001. It is noted that [REDACTED] has not provided a photocopy of any of the corporate checks with which the applicant was paid between July 2000 and January 2001. In his third letter dated May 12, 2003, [REDACTED] states that the applicant was paid cash for his work during the period from July 2000 to January 1, 2001, and subsequently became a regular employee in January 2001. This contradicts his statements in his previous letters that the applicant was paid with a corporate check during the period from July 2000 and January 1, 2001. [REDACTED] lists the applicant's pay periods from January 16, 2001 through January 18, 2002, including hours and gross pay, but he states that the applicant was paid in cash during this period. It is not

clear why [REDACTED] would pay the applicant with a corporate check during the period from July 2000 to January 1, 2001, and then pay the applicant's salary in cash from January 16, 2001 through January 18, 2002, once the applicant became an "on-the-payroll" employee. The applicant has not provided any explanation for these contradictions. 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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Additionally, [REDACTED] letters and affidavit have little evidentiary weight because he does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, [REDACTED] does not indicate the applicant's duties since January 1, 2001, any periods of layoff, or the applicant's address(es) throughout his employment with Park Avenue Subway, Inc.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and 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 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.