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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

M1



FILE: [REDACTED]  
[EAC 02 098 53916]

Office: VERMONT SERVICE CENTER

Date: 11/20/2009

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 time periods.

On appeal, the applicant submits additional documentation.

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.

- (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. 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 burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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).

On August 22, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted the following:

1. A photocopy of his El Salvadoran birth certificate, with an uncertified English translation;
2. A letter from the pastor of Iglesia Cristiana Rehoboth, North Plainfield, New Jersey, dated September 12, 2003, stating that the applicant had been a visitor of the congregation since December 2000;
3. A letter from a friend, [REDACTED] dated September 10, 2003;
4. A letter from a work colleague, [REDACTED] dated September 10, 2003;
5. A statement from Edison Radiology Group, P.A., Edison, New Jersey, indicating that the applicant was charged for services rendered on October 10, 2000;
6. An earnings statement for the one-week pay period ending on December 8, 2000;
7. A photocopy of a hand-written letter, dated September 11, 2003, stating that the applicant lived at [REDACTED] Street, North Plainfield, New Jersey, from November 2000 until August 2003; and,
8. An un-translated, unidentified document.

The director determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on November 6, 2003.

On appeal, the applicant resubmits Nos. 2 through 7, above. He also submits the following additional documentation:

9. An un-translated, uncertified copy of an Internal Revenue Service (IRS) Form W-7(SP);
10. A hand-written letter from Hernan Dubon, dated November 30, 2003, stating that the applicant has worked for his company, Dubon's Drywall, since June 28, 2003.

The applicant claims to have lived in the United States since September 1, 2000. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. The letters provided by the applicant from a friend and co-worker (Nos. 3 and 4, above) are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The letter from the church pastor (No. 2) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was officially registered as a parishioner at his church. Similarly, the rent and employment letters (Nos. 7 and 10) have little evidentiary weight or probative value, as neither is in the form of an affidavit. Nos. 5 and 6 are dated prior to the dates required to establish residence and physical presence. Finally, Nos. 1, 8, and 9, cannot be considered as they are not accompanied by a full English language translations that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English, as required under 8 C.F.R § 103.2(b)(3).

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the acting director's decision to deny the application for temporary protected status will be affirmed.

It is noted that, beyond the decision of the director, the applicant has not submitted sufficient documentation to establish his nationality in that he failed to provide a certified translation of his birth certificate. Therefore, the application may also not be approved 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.