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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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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: [redacted]
[EAC 02 179 50416]

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 (AAO) 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 physical presence in the United States during the requisite time period.

On appeal, counsel for the applicant submits a letter and 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 pubic 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 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 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 April 24, 2003, the director requested the applicant to submit evidence to establish his qualifying continuous physical presence in the United States from March 9, 2001, through to the date of filing his TPS application on May 1, 2002. The record reflects that in support of his initial application and in response to the director's request for evidence, the applicant submitted the following documentation:

1. A photocopy of the identification page from his El Salvadoran passport, issued in Washington, D.C. on December 5, 2000;
2. A photocopy of a letter from the U.S. Department of Labor (DOL), Employment and Training Administration, dated April 21, 1999. The letter indicates that an Application for Labor Certification (Form ETA 750) filed on January 14, 1998, by Village Landscapes and Irrigation, Vienna, Virginia, on behalf of the applicant, was approved on April 21, 1999;
3. A partially illegible photocopy of the first page of a DOL Form ETA-750A, B and C;
4. A photocopy of the first page of an Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, for the year 2000;
5. A photocopy of an IRS Form W-2, Wage and Tax Statement; for the year 2000; and,
6. A photocopy of the first page of an IRS Form 1040A, for the year 1999.

The director concluded that the applicant had failed to establish his qualifying continuous physical presence in the United States during the requisite time period and denied the application on June 13, 2003.

On appeal, counsel for the applicant submits the following additional documentation:

7. An affidavit from the applicant, dated July 11, 2003; and,
8. A letter from Village Landscapes and Irrigation, Inc., Chantilly, Virginia, dated July 3, 2003, stating that the applicant had been employed as a landscape foreman from March 9, 2001, through May 1, 2002. The letter further states that the applicant "has been, for ten years, and continues to be an employee of VL&I, Inc."

The applicant claims to have last entered the United States on November 22, 1992. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support his claim of having been continuously physically present in the United States from March 9, 2001, through to the date of filing his TPS application on May 1, 2002. The affidavit from the applicant (No 7, above) is not, by itself, persuasive evidence of residence or physical presence.

No. 8, above, 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, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the period(s) of layoff (if any), and the applicant's duties with the company throughout the period(s) of his employment. Nos. 1, 2, and 3 are all dated well before the dates required to establish continuous physical presence.

Furthermore, there are several discrepancies noted in the documentation contained in the record. At the time of filing his initial TPS application in 2002, the applicant indicated that he was single, had never been married, had no children, and had never used a social security number. In subsequent applications for an employment authorization document (EAD), submitted by the applicant on January 17, 2003 and January 27, 2004, the applicant continued to note that he was single, but indicated that he used social security number On the 2003 EAD application, he noted that he had a former spouse (Julia Ayala), that his marriage had ended in October 1999, and that he had one child born on November 25, 2000) who resides with him. On his 2004 EAD application, he did not indicate a former marriage or child. No. 5, above, shows the applicant's social security number a and Nos. 4 and 6 show the number as No. 6 shows that in 1999, he was single with no dependents, and No. 4 shows that in 2000, he was married with two dependents, a spouse and daughte

The above-noted discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. 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 contained in the documents submitted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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

It is noted that, beyond the decision of the director, the applicant has also not submitted sufficient evidence to establish that he satisfies the continuous residence requirements described in 8 C.F.R. § 244.2(b). 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.