U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

[redacted]

NM

MAR 30 2005

FILE: [redacted] Office: Vermont Service Center Date:

[EAC 01 211 53745]

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.

for 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 he had continuously resided in the United States since February 13, 2001.

On appeal, counsel, on behalf of the applicant, asserts his claim of eligibility for TPS and submits evidence in support of his claim.

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 June 24, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and 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 failed to establish he had continuously resided in the United States since February 13, 2001. Therefore, the director denied the application on October 1, 2003.

On appeal, counsel, on behalf of the applicant, submits the following documentation in support of his eligibility for TPS: a copy of a letter dated July 10, 2003, from Mr. President of Timberwood Associates, Inc., who stated that the applicant had been working for his company since February 13, 2001; an affidavit dated October 15, 2003, from Mr. who stated that the applicant has resided in the United States since January 1996; a letter dated October 10, 2003, from Ms who stated that she has known the applicant since 1998; a copy of a letter in Spanish dated January 14, 2002, from the New York Department of Labor; copies of the biographical pages of the applicant's passport; copies of the applicant's interim identification card from the New York State Department of Motor Vehicles dated September 21, 2001; copies of a hand-written receipt dated March 5, 1998, from a copy of earnings statements dated October 5, 2001, and January 4, 2002, from Inc.; a copy of the applicant's New York State identification card issued on September 21, 2001; and copies of the applicant's Social Security and Employment Authorization cards.

The employment letter from Mr 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, Mr does not provide the address where the applicant resided during the period of his employment. It is noted that the letter is not notarized or in affidavit form. It is also noted that the applicant had already submitted this letter in response to the director's June 24, 2003 request. In addition, although the applicant provides copies of earnings statements dated October 5, 2001 and January 4, 2002, from Timberwood Associates, Inc., these statements post date the requisite time periods for El Salvador TPS. The statements provided by Mr regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. In addition, the applicant's New York State identification card and the letter from the New York Department of Labor also post date the requisite time periods for TPS. The letter from is not supported by corroborative evidence and the March 5, 1998 receipt from Gigante Express pre-dates the requisite time periods. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS will be affirmed.

It is noted that another record, was created based upon his apprehension near Eagle Pass, Texas, on October 25, 1995. It is also noted that the applicant failed to appear for the applicant's deportation proceedings on August 29, 1996.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for this reason.

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.