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

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[redacted]

MAY 2 2008

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
[EAC 03 028 51847]

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 (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 residence and continuous physical presence in the United States during the requisite time periods.

On appeal, 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 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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).

In support of his initial TPS application, the applicant submitted the following documentation:

1. A photocopy of an extract his El Salvadoran birth certificate, indicating that it was issued in El Salvador on August 15, 2002. The English translation of the extract, however, indicates that it was issued on October 22, 2001;
2. A photocopy of his El Salvadoran identity card;
3. A letter, dated August 21, 2002, from Pastor of St. Rose Rectory, Chelsea, Massachusetts states that the applicant is known in the community and is an active parishioner;
4. A letter, dated August 15, 2002, from stating that he has known the applicant since 1999, and that he met him in Chelsea, Massachusetts, at a church meeting; and,
5. An un-translated letter, dated August 26, 2002, from Santos Hernandez.

On December 3, 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:

6. An affidavit, dated December 16, 2003, from tating that she has known the applicant since January 2001. further states that, to the best of her knowledge, the applicant has not left the United States since his entry in 1999;
7. An affidavit, dated December 16, 2003, from stating that she has known the applicant since January 2001. further states that, to the best of her knowledge, the applicant has not left the United States since his entry in 1999; and,
8. A letter, dated December 17, 2003, stating that he cannot submit any further documentation, such as utility bills, because he did not have a social security number.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on February 25, 2004.

On appeal, the applicant submits the following additional documentation:

9. An affidavit, dated February 29, 2004, from stating that she has known the applicant since January 2001 further states that, to the best of her knowledge, the applicant has not left the United States since his entry in 1999;
10. An undated letter from stating that she has known the applicant for approximately one year;
11. Photocopies of the applicant's earnings statements indicating that he was employed by Doran Greenhouses, Inc., from March 27, 2003, to August 15, 2003;
12. Photocopies of earnings statements dated January and February 2004;

13. A photocopy of a letter from the Social Security Administration, Chelsea, Massachusetts, indicating that the applicant applied for a social security card on January 17, 2003; and,
14. A photocopy of a Vigo international money transfer receipt, dated January 16, 2004.

The letters and affidavits provided by the applicant from acquaintances (Nos. 4, 6, 7, and 9, above) are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The affidavit from [redacted] (No. 3) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was registered as a parishioner at his church. No. 5 is un-translated and No. 10 is not dated. While Nos. 11, 12, 13, and 14, contain evidence of the applicant's residence and physical presence in the United States from January 2003 to January 2004, they are dated well beyond the dates required for establishing qualifying continuous residence and continuous physical presence. Furthermore, it is noted that the extract of the applicant's birth certificate, both the photocopy and translation, indicates that it was issued in El Salvador after the applicant's claimed date of entry into the United States. These 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 evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any 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).

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 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.