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

PHILIP COPY

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FILE: [REDACTED]
[EAC 02 108 51428]

OFFICE: VERMONT SERVICE CENTER

Date: NOV 08 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: 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, reopened, and denied again by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The case 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.

On June 27, 2003 the director denied the application after determining that the applicant had abandoned his application by failing to appear for fingerprinting as instructed.

The record reveals that the applicant filed his application on February 4, 2002. On March 25, 2002, the applicant was sent a Fingerprint Notification requesting that he appear for fingerprinting on May 11, 2002, at 8:00 AM. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on June 27, 2003.

The applicant responded to the director's decision on July 21, 2003. The applicant requested that his TPS application be reopened and stated "I missed my appointment due to the fact that my mailbox was taken off the front of the house and I did not know that a letter came from your office for me to come and have my fingerprints taken."

The record of proceedings shows that the applicant was issued another fingerprint notice dated January 28, 2004.

The record also shows that the director denied the TPS application on August 3, 2004 determining that the applicant had failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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.

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. An extension of the TPS designation has been granted 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).

The applicant initially submitted along with his TPS application the following documentation:

1. A letter from [REDACTED] dated September 6, 2001 in which he stated that the applicant has been his tenant at [REDACTED] Massachusetts, from December 25, 2000, to the present; and,
2. A letter from the Reverend of Parroquia Familiar Nuestra Senora De Guadalupe dated August 17, 2001, in which he stated that the applicant has been a member of the parish since December of 2000.

On May 27, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

3. An affidavit from [REDACTED] in which he stated that the applicant is his brother-in-law and that the applicant resided with him at [REDACTED] Massachusetts, since his arrival in the United States in December of 2000 because when he arrived he had no means of paying for rent and utilities on his own;
4. An affidavit from [REDACTED] in which she stated that she is a case manager for Healthy Families and has personally known and been acquainted with the applicant in the United States as she works with him and his wife; and,
5. An affidavit from [REDACTED] in which she stated that she has personally known and been acquainted with the applicant in the United States as he is her niece's husband.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 3, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

6. Copies of two rent receipts dated January 1, 2001, and February 1, 2001, in the amount of \$400.00 each and bearing the applicant's name as giver and [REDACTED] as receiver;
7. An affidavit from [REDACTED] in which she states that she has known and been acquainted with the applicant in the United States since his arrival in December of 2000, in that she is his friend and worked with him when he arrived in the country;
8. An affidavit from [REDACTED] in which she states that she has known and been acquainted with the applicant in the United States since his arrival in December of 2000, in that she is his friend and worked with him when he arrived in the country; and,
9. An affidavit from [REDACTED] in which he states that he has known and been acquainted with the applicant in the United States since his arrival in December of 2000, in that he is his friend and worked with him when he arrived in the country

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. The applicant submitted a letter from [REDACTED] dated September 6, 2001 (No. 1 above) in which he stated that he was the applicant's landlord from December of 2000 to the present. In contrast, the applicant submitted copies of rent receipts for January and February of 2001 (No. 6 above) that showed that he paid \$400.00 in rent to

It is further noted that [REDACTED] stated in an affidavit dated May 24, 2004 (No.3 above), that the applicant lived with him upon arriving in the United States because he had no means of paying for rent and utilities on his own. 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.

The affidavit from [REDACTED] (No. 2 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)(v). Specifically, the reverend does not provide the address where the applicant resided during the period of his involvement with the church.

The affiants, [REDACTED] and [REDACTED] all state that the applicant has worked with them since his arrival in the United States, however, they do not provide the name, telephone number, or address of their employer. In addition, the affiants do not state the address where the applicant resided during the period of their acquaintance with him. It is further noted that the applicant did not submit any evidence to demonstrate that he has ever been employed in the United States. In fact, the applicant's brother-in-law stated in his affidavit (No. 3 above), that the applicant initially lived with him because, "When he arrived to the United States he had no means of paying for rent and utilities on his own." The applicant has failed to submit any objective evidence to explain or justify the inconsistencies.

The affiants [REDACTED] and [REDACTED] (Nos. 4 and 5 above) do not specify the time period in which they were acquainted with the applicant. Further, affidavits alone are insufficient evidence to establish the applicant's continuous residence and continuous physical presence in the United States during the requisite period.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.