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

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[redacted]

FILE: [redacted] [EAC 04 006 52098] 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 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 had failed to submit evidence demonstrating his eligibility to file as a late registrant, and for his failure to file evidence demonstrating his continuous residence and continuous physical presence in the United States.

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.

(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.

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. A subsequent 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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS), on October 7, 2003.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On March 30, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to establish that he was eligible for TPS and denied the application on June 2, 2004.

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

The applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for TPS will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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

1. An affidavit from in which he stated that he has known and has witnessed the applicant's presence in the United States since January 3, 2000, and that the applicant has lived continuously in Virginia;
2. An affidavit from in which he stated that he has known and has witnessed the applicant's presence in the United States since January 3, 2000, and that the applicant has lived continuously in Virginia; and
3. An affidavit from in which he stated that he has known and has witnessed the applicant's presence in the United States since January 3, 2000, and that the applicant has lived continuously in Virginia.

As stated above, the applicant was requested on March 30, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 2, 2004.

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

4. An affidavit from a clinician for Valley Community Services Board, in which he states that he provided several brief therapy sessions in his home to the applicant in mid to late March of 2001 to address the applicant's reoccurring nightmares and paranoias;
5. An affidavit from in which she states that the applicant assisted she and her husband in painting the interior of their house in February of 2001 and has since performed a number of odd jobs around their house;
6. An affidavit from in which she stated that she has known the applicant since February 21, 2001, that the applicant has assisted her with cleaning the salon that she owns, and that he has assisted her in painting her house, babysitting, and yard work; and,
7. Pay receipts issued by for salon cleaning and yard work, babysitting, and house painting completed by the applicant on March 7 and 21of 2001, April 7, 14, and 28 of 2001, May 4 and 18 of 2001, and June 2, 2001.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The affiants and all stated that they had known the applicant since his arrival in the United States on January 3, 2000, however, the applicant specifically states in his Application for Temporary Protected Status and his Application for Employment Authorization that he did not arrive to the United States until February 14, 2000. 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.

There has been no corroborative evidence submitted to support the statements made by and regarding the applicant's claimed presence in the United States since February 14, 2000. The applicant claims to have been in the United States since February 14, 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v). Furthermore, the service receipts submitted as evidence do not contain the address of the beauty salon, do not contain the applicant's address during his period of employment, are not sequentially numbered, and are too sporadic in time to establish continuous residence and continuous physical presence in the United States during the requisite time period beginning February 13, 2001.

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 on these grounds 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.