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U.S. Citizenship
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Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: NOV 28 2005

[EAC 02 292 51802]

IN RE:

Applicant:



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 establish that he: (1) is a citizen or national of El Salvador; (2) had continuously resided in the United States since February 13, 2001; and (3) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 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).

The first issue in this proceeding is whether the applicant is a citizen or national of El Salvador.

In a notice of intent to deny dated January 14, 2004, the applicant was requested to submit evidence to establish that he is a citizen or national of El Salvador. The director noted that the copy of his birth certificate was insufficient to establish nationality. The applicant failed to respond; therefore, the director denied the application on June 16, 2004.

On appeal, the applicant submitted a copy of his El Salvadoran passport issued in Boston, Massachusetts, on May 5, 2004.

Accordingly, the applicant has overcome this ground for denial.

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

The record shows that the applicant filed his TPS application on September 9, 2002. In support of his application, the applicant submitted:

1. Affidavits dated September 2, 2002, from [REDACTED] all stating that they have personally known the applicant since on or about 2 years, and to the best of their knowledge, the applicant has resided continuously in the United States since their acquaintance.

2. An affidavit dated September 2, 2002, from [REDACTED] stating that he has personally known the applicant since on or about 15 years, and to the best of his knowledge, the applicant has resided continuously in the United States since their acquaintance.

In a notice of intent to deny dated January 14, 2004, the applicant was requested to provide evidence establishing his qualifying continuous residence and continuous physical presence in the United States. He was advised that the statements submitted by individuals to document his claim are insufficient. The applicant failed to respond; therefore, the director denied the application on June 16, 2004.

On appeal, the applicant asserts that he has complied with any and all requirements for eligibility for TPS, and that he has submitted enough documentation apart from his own statement. He submits:

3. Copies of pay statements dated October 11, 2002, October 18, 2002, and November 1, 2002.
4. Copies of billing statements from Cingular Wireless for the periods November 11, 2003 to November 12, 2003; November 13, 2003 to December 12, 2003; and April 13, 2004 to May 12, 2004.

The statements from [REDACTED] (No. 1 above), and from [REDACTED] (No. 2 above) attest to the applicant's continuous residence and continuous physical presence based on their "personal knowledge," but fail to provide any specifics regarding the nature, circumstances, or origin of the affiants' acquaintanceship with the applicant, and the address where the applicant resided during the time of their acquaintance. Moreover, the wording of these "fill-in-the-blank" statements is identical. As such, these documents appear to have been prepared for the affiants rather than by the affiants. Additionally, it is noted that the applicant claimed on his application that he entered the United States on December 14, 1999. However, [REDACTED] stated that he has known the applicant for approximately 15 years and that the applicant had resided continuously in the United States since their acquaintanceship. The inconsistency of this statement raises questions of credibility.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Additionally, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since December 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The remaining evidence contained in the record (Nos. 3 and 4 above) only establishes the applicant's continuous residence and continuous physical presence since October 2002, after the date the TPS application was filed.

The applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the TPS application will also be denied on this ground.

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