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U.S. Citizenship
and Immigration
Services

MI

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **NOV 29 2005**

[EAC 01 206 51357]

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.

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 determined that the applicant failed to establish 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. The director, therefore, denied the application.

On appeal, the applicant provides additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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 section 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 physically present*, as used 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 term *continuously resided*, as used 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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite 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 record shows that the applicant filed his TPS application on June 4, 2001. On December 2, 2002 and again on July 11, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

1. A copy of an Auto Customer Notice dated September 7, 2001 and an Auto Billing Statement dated October 11, 2001 from Nationwide Assurance Company.
2. Copies of earnings statements from Danella Construction Corp. of Virginia, Herndon, Virginia dated January 4, 2002, February 1, 2002 and February 22, 2002.
3. A copy of an AT&T bill for the period from June 6, 2002 to July 5, 2002.
4. A copy of a Monthly Billing Statement from George Mason Mortgage, LLC, Fairfax, Virginia dated December 13, 2002.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant requests that the director's decision be reconsidered. According to the applicant, "We are trying hard to make a decent living in this country and give a better opportunity to our children so that they can reach a better life and serve to this country." The applicant also submits:

1. A copy of a Member Confirmation of Contributions dated July 1, 2003.
2. Copies of 2001 Internal Revenue Service (IRS) W-2, Wage and Tax Statements.
3. A statement from [REDACTED] copy of a letter from [REDACTED] Payroll Administrator, Danella Construction Corp., Plymouth Meeting, Pennsylvania, and a statement from [REDACTED]
4. A copy of a lease dated September 22, 2001.
5. A copy of the applicant's B-1 Visa indicating entry on July 19, 2000.
6. Copies of a Verizon Account Summary dated February 20, 2002 and Sprint bills dated March 3, 2003 and an undated AT&T Summary of Charges.
7. Copies of earnings statements dated September 21, 2001, September 28, 2001, October 12, 2001, October 19, 2001, November 9, 2001, January 4, 2002, February 1, 2002, February 22, 2002, and December 27, 2002.
8. A copy of a letter from RGS Title dated November 15, 2002.
9. A copy of a billing statement from [REDACTED] with a due date of January 1, 2003.
10. A copy of a Statement of Account from Chevy Chase Bank dated March 24, 2003.

The applicant also resubmitted evidence previously provided.

The Auto Customer Notice dated September 7, 2001 is the earliest date presented, in response to the notice, as evidence of the applicant's presence in the United States.

The 2001 W-2's indicate the applicant was present in the United States in 2001. Similarly, the applicant's visa indicates that he entered the United States on July 19, 2000. However, the documents cannot establish the applicant's continuous residence from February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Mr. [REDACTED] states that the applicant entered the United States on July 12, 2000. Mr. [REDACTED] states that the applicant has resided in Virginia since he came to the United States. However, the statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Furthermore, Mr. [REDACTED] failed to indicate the dates of the applicant's presence in the United States. Ms. [REDACTED] states that her company employed the applicant from February 12, 2001 through February 21, 2003. However, Ms. [REDACTED] has failed to provide any supporting documentation prior to September 21, 2001. Furthermore, the statement 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, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties of employment. The remaining evidence presented is dated subsequent to the dates required to establish entry, continuous residence and continuous physical presence during the qualifying period. Therefore, this evidence is of little or no probative value.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.

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.