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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI

FILE:

[REDACTED]
[EAC 03 044 51580]

Office: VERMONT SERVICE CENTER

Date: OCT 03 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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The matter 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 failed to establish he had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant states:

The reason for this appeal is so my case could be reconsidered. Enclose [sic] are copies of evidence requested to prove that I have been in this country since February 2001 to the present time. I also send evidence of my nationality. If more information is requested please feel free to contact me and I will provide you with any information needed to reconsider my case.

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).

Upon initial submission, the applicant submitted the following documentation.

1. An affidavit on a partially completed form dated September 3, 2002 from [REDACTED] who states the applicant has been a person of good moral character and an asset to the community.
2. An affidavit on a partially completed form dated September 3, 2002 from [REDACTED] who states the applicant has been a person of good moral character and an asset to the community.

On March 10, 2004, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. In response, the applicant submitted:

3. A copy of his Republic of El Salvador passport issued in New York, New York on January 4, 1999.
4. Copies of two rent receipts dated January 9, 2002 and February 1, 2002 to the applicant from [REDACTED] for a property [REDACTED]
5. A copy of a Western Union money transfer showing the applicant sent money to a person in El Salvador on October 17, 2002.
6. An affidavit dated September 13, 2002 from Ernesto Lopes of USA Car Wash who states that the applicant worked for the company since January 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish that he had met the continuous residence and continuous physical presence criteria for TPS and denied the application on June 16, 2004. On appeal, the applicant submitted the following additional documentation:

7. Copies of Western Union money transfers showing the applicant sent money to persons in El Salvador on February 23, 2003 and on May 4, 2003.
8. A rent verification affidavit dated July 7, 2004 from [REDACTED] attesting that he rented a room /apartment to the applicant from January 2003 to the present.

The record reflects that on his Form I-821, Application for Temporary Protected Status, and on his Form I-765, Application for Employment Authorization, signed on September 3, 2002, the applicant stated that he entered the United States on May 19, 2000. However, he also forwarded a copy of his Republic of El Salvador passport issued to him in New York on January 4, 1999. The applicant's statement as to his date of entry and his submitted evidence showing he was issued a passport in the United States prior to his claimed entry casts doubt upon the validity of the evidence forwarded by him for the record. It is noted that on subsequent Forms I-821 and I-765 signed on August 16, 2003 the applicant also stated that he entered this country on May 19, 2000. 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).

It is noted that affidavits (Items #1 and #2) from acquaintances are not, by themselves, persuasive evidence of residence or physical presence. Additionally, the employment affidavit from Mr. [REDACTED] (Item #9) 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 affidavit does not provide the address where the applicant resided during the period of employment. Other than the employment affidavit, the applicant has not submitted any evidence to establish his continuous residence or continuous physical presence in the United States during the period from February 13, 2001 to September 18, 2002, the date he filed his application for TPS. He has, thereby,

failed to establish that he has met the 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.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on September 18, 2002, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

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 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.

ORDER: The appeal is dismissed.