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

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FILE:

Office: VERMONT SERVICE CENTER

Date:

OCT 06 2005

[EAC 02 187 51787 - I-821]

[EAC 03 219 50583 - MOTION]

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. The director subsequently dismissed a motion to reopen the case. The case is now before the Administrative Appeals Office (AAO) 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 dismissed the motion because the applicant failed to establish that she 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 submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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. 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 valid 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on May 10, 2002. In support of his initial application, the applicant submitted the following:

1. A photocopy of an abstract of his El Salvadoran birth certificate, with English translation, issued in El Salvador on April 17, 2001;
2. A photocopy of his El Salvadoran personal identification card (*cédula*), issued in El Salvador on July 6, 2001;
3. A letter, dated April 6, 2002, from Giant Express, Inc., Hempstead, New York, stating that the applicant had been a client since 1995; and,

4. Three letters from acquaintances stating that they had known the applicant since his entry into the United States in 1995.

On December 11, 2002, the director requested the applicant to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

5. A letter, dated March 7, 2003, from an acquaintance stating that the applicant had been in the United States continuously since September 19, 2000;
6. A photocopy of an Urgente Express international courier receipt, dated November 11, 2001;
7. A photocopy of a MoneyGram international money transfer receipt, with an illegible date; and,
8. Photocopies of earnings statements issued by ADP on behalf of Three Hands Corp., Sylmar, California, dated January through March 2003.

The director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States and denied the application on June 4, 2003. On July 21, 2003, the applicant filed an appeal of that decision. Because the appeal was not filed within the time allotted, the director accepted the appeal as a motion to reopen. In support of the motion, the applicant submitted:

9. Three additional letters from acquaintances attesting to the applicant's residence and physical presence in the United States.

On March 4, 2004, the director dismissed the applicant's motion and reaffirmed his decision to deny the application. The applicant filed the instant appeal of that decision on April 3, 2004. In support of the appeal, the applicant submits:

10. A second letter, dated March 24, 2004, from Giant Express, Inc., Hempstead, New York, stating that the applicant had been a client since 1995;
11. An affidavit from an acquaintance; and,
12. A letter, dated March 19, 2004, from [REDACTED] of the Parish of Our Lady of Loretto, Hempstead, New York, stating that the applicant had been a registered parishioner for over five years.

The applicant claims to have lived in the United States continuously from May 15, 1995, to the date of filing his TPS application on May 10, 2002. It is reasonable to assume that he would have a variety of contemporaneous evidence to support this claim. Letters from acquaintances and businesses are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The letter from [REDACTED] has little evidentiary weight or probative value as it merely indicates that the applicant was registered as a parishioner at the church on an unspecified date in 1999; it does not establish the applicant's continuous residence and continuous physical presence from that date through to the date of filing his TPS application. The statements contained in No. 8 are dated beyond the required dates.

It is noted that Nos. 1 and 2, above, were both issued to the applicant in El Salvador while the applicant claims to have been physically present in the United States. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is concluded that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence March 9, 2001, to the date of filing his TPS application. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The petition 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.