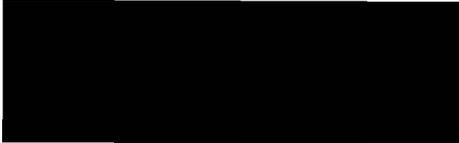




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
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JAN 30 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 01 232 53759]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). The applicant filed a motion to reopen that was denied by the director as untimely. The director reopened the matter and again denied the application on August 3, 2004, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is stated to be 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 been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant requests that evidence that he previously submitted by reconsidered.

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, 2007, 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:

1. A copy of his Form I-221A, Order of Release on Recognizance dated July 16, 1999, along with a Form I-831, Continuation Page for Form I-220A, releasing him from the custody of the Immigration and Naturalization Service in Harlingen, Texas, and outlining the conditions for his release.

Along with his motion to reopen dated July 1, 2003, the applicant submitted:

2. His letter from the Social Security Administration dated August 23, 2001 indicating that he applied for his card on that date and that he should receive it in about two weeks.
3. An affidavit from Mr. [REDACTED] dated July 1, 2003, who states that the applicant rented a room from him since July 1999 in Amityville, New York. Mr. [REDACTED] indicates that although he was "tenant in charge of the premises," he was also the Landlord.

4. An affidavit from his friend, Mr. [REDACTED] dated July 1, 2003, which refers to the applicant but states in the body of the document that: "I have known my friend, [REDACTED] for almost four years. I know that he has been continuously present in the United States since July 1999. Mr. [REDACTED] has been for me an honest person, hardworking and dependable."

5. An affidavit from his uncle, Mr. [REDACTED] dated July 30, 2003, which refers to the applicant but states in the body of the document that: "I have known my nephew, [REDACTED] for almost four years. I know that he has been continuously present in the United States since July 1999. Mr. [REDACTED] has been for me an honest person, hardworking and dependable."

Along with a motion to reopen letter dated August 24, 2004, the applicant submitted:

6. Copies of four rent receipts dated February 1, 2001, March 1, 2001, June 1, 2001, and July 1, 2001, showing that \$200 rent was paid on each date to Mr. [REDACTED]

The record of proceeding contains a copy of a Form I-213, Record of Deportable/Inadmissible Alien, reflecting that the applicant was arrested in Edna, Texas on July 8, 1999. On January 12, 2000, an Immigration Judge in New York, New York, granted the applicant voluntary departure from the United States on or before May 11, 2000, with an alternate order of deportation if the applicant should fail to depart as required.

It is noted that affidavits from a friend and family member are not, by themselves, persuasive evidence of residence or physical presence. Additionally, the affidavits from Mr. [REDACTED] and Mr. [REDACTED] (Items #4 and #5) attest to continuous presence in the United States for a person named [REDACTED] and not the applicant. The rent receipts submitted by the applicant (Item #6) are also suspect because they were signed by Mr. [REDACTED] not by Mr. [REDACTED], the person who was said to be the applicant's landlord (Item #3) during that period of time. These discrepancies along with the fact that the rent receipts are surfacing late in the adjudicative process calls into question the validity of the documents. 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 visa petition. It is incumbent on the petitioner 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 determined that the applicant has provided insufficient evidence to establish his continuous residence and continuous physical presence during the required time period. 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, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. He has provided a copy of his birth certificate. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Therefore the application shall be denied for this additional reason.

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.