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U.S. Citizenship
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FILE:



[EAC 02 028 53629]

Office: VERMONT SERVICE CENTER

Date:

MAR 05 2007

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
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 claims to be a 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.

On appeal the applicant asserts that he entered illegally and did not have any documentation for the period before March 1, 2001.

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. In this case the applicant has submitted original plane tickets for a flight in his name from Los Angeles, California, to Washington Dulles Airport, issued March 1, 2001.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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).

The applicant's application was denied on December 14, 2004. The applicant subsequently submitted a Motion to Reopen and submitted additional evidence. The director granted the motion to reopen and on June 28, 2005, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and was given thirty days to respond. The applicant, in response, provided the following documentation:

1. A statement that he arrived in the United States in January of 2001 and stayed with friends and relatives in Los Angeles before moving to Virginia.
2. Indiscernible copies of documents resembling pay stubs.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 2, 2005.

On appeal, the applicant reasserts his claim but provides no further evidence to corroborate his assertions.

The applicant has submitted two letters in support of the assertion that he resided in the United States prior to February 13, 2001, but both letters contradict the applicant's own testimony by claiming knowledge of the applicant in November of 2000, and contradict the applicant's assertion that he did not arrive in Virginia until March 1, 2001. The letters of support speak of residence in Virginia as since 2000, but this contradicts the applicant's own testimony. 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). In this case the inconsistencies raise doubts about the credibility of the attestation, and the letters provide little support the applicant's assertions and they are not corroborated by any contemporaneous evidence in the record.

In this case, the facts, as they are articulated by the applicant, indicate that the applicant did not establish a residence in the United States until some time after March 1, 2001. The applicant asserts that he entered without inspection in January of 2001, but admits that he moved to Virginia on March 1, 2001, and has submitted his original plane ticket and boarding pass corroborating this assertion. The applicant's current address is in Virginia, thus it is reasonable to infer that if the applicant has been present in Virginia since his March 1, 2001, arrival. The applicant's claimed presence in Los Angeles – January through March of 2001, or three months – is not corroborated by any evidence in the record.

The evidence submitted by the applicant can not be considered extensive. The letters submitted by the applicant are inconsistent, and other documentation is only marginally probative on the issue of the applicant's established residency during the required period.

Thus, the applicant has not submitted sufficiently probative evidence to establish his qualifying continuous residence in the United States during the period from before February 13, 2001, to March 1, 2001. 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.

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.