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U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: NOV 28 2008

[WAC 06 266 50925, *appeal*]
[EAC 02 140 52658]

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 Vermont Service Center. Any further inquiry must be made to that office.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 applying for 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 had not met the continuous residence and continuous physical presence requirements for TPS.

On appeal, the applicant states:

I would like to make an appeal to the decision because I entered the U.S. on 1/1983. Since that time I have been in the United States. I also enclose evidences that I am a national from El Salvador, and I applied for TPS since the first one is 2001 thru 2006. I have been sending enough evidence and I don't agree with your decision.

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 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.
- (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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002.

The applicant has provided the following documentation concerning his continuous residence and continuous physical presence during the required periods:

1. A court disposition dated May 1, 2006, from the District Court of Nassau County – Hempstead in New York, showing that he was convicted of operating a motor vehicle under the influence of drugs or alcohol, a misdemeanor, on February 19, 2002 and an equipment violation based upon his arrest on May 27, 1994.
2. A copy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return, for 2001.
3. A copy of the applicant's tax return transcripts issued to him by the Internal Revenue Service (IRS), on May 3, 2006. The transcripts are for tax periods ending December 31, 2000, December 31, 2001, December 31, 2002, and December 31, 2004.
4. The front of an envelope addressed to the applicant in New York from El Salvador postmarked November 29, 2001.

5. A copy of the applicant's deposit slip dated May 18, 2002, and his bank statement for Roslyn Savings Bank in Jericho, New York from August 1, 2002 thru August 31, 2002.
6. Copies of twelve receipts the applicant received from Roosevelt Educational Alcohol Counseling Treatment Center, Inc. in Roosevelt, New York, from March 7, 2002 to May 22, 2002.
7. A copy of the applicant's medical bill from South Nassau Community Hospital addressed to him in Roosevelt, New York, dated September 22, 2003.
8. Copies of Traveler's Express International Money Orders that the applicant purchased on November 10, 2003 and December 10, 2003 showing his address in New York.
9. A copy of a postal money order that the applicant purchased on February 5, 2005 showing his address in New York.
10. A copy of a transcript receipt the applicant received from the District Court of Nassau County in Hempstead, New York on May 1, 2006.
11. A letter to the applicant dated May 12, 2006 from [REDACTED] President of Complete Building Maintenance in Merrick, New York, in which he states that he worked for the firm from March 2000 to August 2002.
12. A copy of the applicant's New York State driver's license issued to him on August 15, 2006.
13. A letter to the applicant dated May 12, 2006 from Lenny Shaw, Director of Operations of Alexander Wolf & Company, Inc. in New York, New York, in which he states that he has been the firm's employee for the past four years.
14. A copy of the applicant's El Salvadorian passport issued to him in Long Island, New York, on May 6, 2007.
15. A copy of a check that the applicant received from Town N Harbor Owners Corp. in Hempstead, New York dated August 22, 2006.
16. A letter from [REDACTED] who states that he and the applicant met at the church Roca de Salvacion where they both are members. He further states that he has known the applicant since January 2001
17. A copy of the applicant's T-Mobile bill addressed to him in New York, showing a due date of September 10, 2006.

The court disposition dated May 1, 2006, (Item # 1) above, from the District Court of Nassau County shows that the applicant was arrested on May 27, 1994 for operating a motor vehicle under the influence of drugs or alcohol, a misdemeanor, on February 19, 2002 and an equipment violation based upon his arrest on May 27, 1994. The applicant offers no explanation why his court case remained dormant from 1994 and was not actively considered by the Judge until 2002. Doubt 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. 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).

The applicant's IRS Form 1040, U.S. Individual Income Tax Return, for 2001 (Item # 2), is of little evidentiary value because the applicant's tax return transcripts, (Item # 4), issued to him on May 3, 2006 reflect that IRS has no record of him filing a return for the tax period ending December 31, 2001. Nor does the IRS have a record of him filing a tax return for the earlier tax period ending December 31, 2000, just before the beginning of the continuous residence and continuous residence periods began. .

The employment letters from [REDACTED] (Item # 13), have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in affidavit form and are not signed and attested to by the employers under the penalty of perjury. Additionally, neither employment letter provides the address where the applicant resided during the period of his employment. The letter from Pastor [REDACTED] (Item # 16), shall be considered from an acquaintance as it is not on a church letterhead. Had it been on an official letterhead it would still have had little evidentiary weight or probative value as it does not provide the address where the applicant resided during the membership period. 8 C.F.R. § 244.9(a)(2)(v). Affidavits from acquaintances, (Item # 16), and the front of an envelope addressed to the applicant, (Item # 4), transmitted as evidence in this case are not persuasive evidence of continuous residence or continuous physical presence. After review of the record, it is determined that the applicant not has provided convincing evidence to establish his continuous residence and continuous physical presence during the required time periods. 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision is affirmed for these two reasons.

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.