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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MJ

DATE: Office: VERMONT SERVICE CENTER

DEC 02 2011

FILE:

IN RE: Applicant:

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254a

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that the director's decision is in error as the record contains "abundant evidence of the applicant's presence since at the latest, 1998." Counsel indicates at Part 2 on the appeal form that a brief and/or additional evidence would be submitted to the AAO within 30 days.¹ However, a year later, no additional correspondence has been presented by either counsel or the applicant.

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 Secretary 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:

¹ Every appeal submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations in this chapter requiring its submission. 8 C.F.R. § 103.2(a)(1). The Form I-290B instructs the applicant to submit a brief and additional evidence to the AAO within 30 days of filing the appeal.

- (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 term *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 term *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 designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2012, 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 U.S. Citizenship and Immigration Services (USCIS). 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The record reflects that the applicant filed his first TPS application ([REDACTED]) on December 9, 2007.² The applicant, in an attempt to establish continuous residence and continuous physical presence in the United States, submitted:

- Receipts dated January 5, 2001, and May 10, 2002, from Gaby's Furniture of Bakersfield, California.
- A money order receipt issued on February 21, 2001.
- Earnings statements issued on January 1, 2004, December 23 and 30, 2005, and June 15, 2007 from citrus labor contractor, [REDACTED] of Bakersfield, California.
- Earnings statements dated in 2002, 2003 and 2004 from citrus labor contractor, [REDACTED] of Bakersfield, California that appeared to have been altered.
- Earnings statements issued on August 19, 2006, September 2, 2006, November 24, 2006, December 29, 2006, and May 16, 2008, from several farm labor contractors.
- An undated letter from [REDACTED] of Santos Benites Gardening in Bakersfield, California, who indicated that the applicant was in his employ as a part-time gardener from January 2001 to November 2003.
- Money transfer receipts from Western Union and Dolex Dollar Express dated May 3, 2001, July 13, 2003, and February 8, 2004.
- An unsigned and undated statement written in the Spanish language without the required English translation.

On August 20, 2008, the director denied the initial application because the documents presented were not sufficient to establish continuous residence and continuous physical presence in the United States during the requisite periods. No appeal was filed from the denial of that application.

The applicant filed the current application on March 23, 2009. Along with the current application, the applicant submitted copies of documents that were previously provided with the filing of his initial application and:

- Earnings statements issued on December 28, 2001, April 26, 2002, January 17, 2003, May 11, 2005, April 6 and 13, 2007, May 18, 2007, November 9 and 30, 2007 and December 21, 2007, from several farm labor contractors.
- A receipt dated May 9, 2001, from Bill Wright Toyota of Bakersfield, California.
- A receipt with an indecipherable date from Urgente Express.
- A document dated April 7, 2008, from the Social Security Administration, Retirement, Survivors, and Disability Insurance, Request for Employee Information regarding the applicant's earnings for the year 2007.
- Form W-2, Wage and Tax Statement, for 2006.

² The applicant was eligible for late registration under 8. C.F.R. § 244.2(f)(2)(ii).

On September 22, 2009, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001, in the United States. The applicant was also requested to submit documentation from the Social Security Administration reflecting his earnings, and transcripts of his income tax returns for 2001 through 2005. The applicant, in response, provided copies of documents that were previously provided along with:

- A copy of a birth certificate for his son, who was born on November 4, 2009, in California.
- Earnings statements issued subsequent to the filing of his current TPS application.
- Wage and tax statements for 2007 and 2009 and a wage and tax statement with no year listed.
- An earnings statement issued on May 11, 2005, from citrus labor contractor, [REDACTED] of Bakersfield, California.
- A document dated July 30, 2010, from Dolex Dollar Express, Inc., reflecting money transfer transactions (December 2003, March 2004, March, May, August, and November 2005, January, March through July, September and November 2006, January through April, June and July 2007, September and October 2008) to El Salvador.
- An indecipherable earnings statement from farm labor contractor [REDACTED].

The director determined that the applicant had only provided partial evidence of his continuous residence and continuous physical presence in the United States. The director noted that the employment letter from [REDACTED] was not dated, that a wage and tax statement did not have the year listed and that a poor-quality copy of [REDACTED] was provided. The director advised the applicant that he had failed to submit the requested documentation reflecting his earnings from the Social Security Administration and the transcripts for 2001 to 2005 from the Internal Revenue Service. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application.

Because the year is missing from the wage and tax statement reporting wages of \$5330.75, it has little probative value or evidentiary weight. No explanation has been provided why the requested documents from the Social Security Administration and the Internal Revenue Service were not submitted. These documents may have supported the applicant's claim of continuous residence and continuous physical presence in the United States during the requisite periods.

The receipt dated May 10, 2002, from Gaby's Furniture has little probative value and evidentiary weight as it was not signed by a representative of the furniture store. The letter from [REDACTED] also 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 affiant does not provide the address where the applicant resided during the period of his employment.

The applicant submitted earning statements that appear to indicate they were issued on April 13, 2002, March 30, 2003, and June 1, 2004. However, the year on each statement appears to have altered (different typeface), and are therefore questionable. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). In addition, these earnings statements are not supported by any corroborative evidence.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. 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.