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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

[Redacted]

M₁

DATE: **JUL 31 2012** Office: VERMONT SERVICE CENTER

FILE: [Redacted]

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 is a 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 record reveals that the applicant filed a TPS application, on June 27, 2011, subsequent to the initial registration period, and indicated that he was filing an initial TPS application.¹ The director denied the application on December 23, 2011, because the applicant failed to provide an identity document; and, failed to establish his continuous residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The director noted that the applicant submitted evidence of his presence in the United States for the years 2003, 2004, and 2005, but failed to submit evidence to establish that he resided in the United States as of February 13, 2001.

On appeal, the applicant asserts that the director erred in denying his application because he has submitted the required evidence, including his birth certificate, with an English translation; and, evidence of his continuous residence and his physical presence in the United States. The applicant submits additional evidence.

The AAO has reviewed all of the evidence, and has made a *de novo* decision based on the record and the AAO's assessment of the credibility, relevance and probative value of the evidence.²

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 as 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;

¹ The record reveals that on July 5, 1990, the applicant was granted asylum by an immigration judge; and, after a subsequent appeal by the legacy INS, on January 14, 1991 the Board of Immigration (BIA) ordered the matter continued indefinitely pending further proceedings. Therefore, as determined by the director, the applicant has established that the TPS application should be accepted as a late initial registration under 8 C.F.R. § 244.2(f)(2)(ii).

²The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- (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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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, 2013, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his initial application with United States Citizenship and Immigration Services (USCIS) on June 27, 2011.

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 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 first issue in this proceeding is whether the applicant has established his nationality and his identity.

With his TPS application, the applicant submitted a photocopy of his El Salvador birth certificate with an English translation showing that he was born in El Salvador; but, he did not provide a national identification document bearing his photo and/or fingerprint. The regulations state that if these documents are unavailable, an applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents explaining why the consular process is unavailable, and affirming that he or she is a national of the designated state, in this case El Salvador. 8 C.F.R. § 244.9(a)(1). It is noted that the record includes photographs and fingerprints of the applicant produced by former Immigration and Naturalization Service (INS) officials when the applicant entered the United States without inspection and was placed in removal proceedings on January 11, 1990. This evidence, however, does not establish the applicant's nationality and identity and does not satisfy the requirement that the applicant provide a photo identification pursuant to 8 C.F.R. § 244.9(a)(1), therefore the director's decision to deny the application on that ground is affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence and his physical presence in the United States throughout the requisite period.

The record includes the following:

- 1) Documentation, including money transfer receipts dated in 2003, 2004, and 2005; and, income tax returns, Form W-2 Wage and Tax statements, and earnings statements, for the period from 2003 to 2011.
- 2) A letter from [REDACTED], the applicant's current employer, attesting to having known the applicant since early 2001. The affiant stated that he first met the applicant as a friend of an employee, that he has attended most of the company's functions over the years, and that he started doing some work for them in 2004.
- 3) An affidavit from [REDACTED] attesting to the applicant's character and to their friendship; and, to having known the applicant since July 2000.
- 4) An affidavit from [REDACTED] attesting to the applicant's character and to their friendship; and, to having known the applicant since March 1995.
- 5) An affidavit from [REDACTED] attesting to the applicant's character and to their friendship; and, to having known the applicant to have resided in the United States since 1995.
- 6) An affidavit from [REDACTED] the applicant's nephew, attesting to the applicant's character, and to having known the applicant to have resided in the United States since 2000.
- 7) An Apartment Lease Contract, dated October 29th 2010, signed by the applicant, for an apartment located at [REDACTED]
- 8) An April 8, 2011, Affidavit Regarding Permanent Move-out or Court Order Affecting Spouse, Co-Resident or Occupant, from the applicant, indicating that on October 29, 2010, he signed a lease, as co-resident, for an apartment located at [REDACTED] and that he had permanently moved out of the apartment.

The applicant submitted an affidavit from [REDACTED] dated January 12, 2012, stating that the applicant "is my coworker since January 15th up to the present." However, he does not state the year when they started working together, therefore, the affidavit is of no probative value.

We find that cumulatively, the documentation of record, including income tax returns, Form W-2 Wage and Tax statements, earnings statements, and money transfer receipts, establishes the

applicant's continuous residence and his physical presence in the United States from 2003 through 2011. However, the record lacks sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The evidence provided to establish the applicant's continuous residence in 2001 and 2002 is comprised of the above affidavits. The affidavits, however, lack detail and do not establish the applicant's continuous residence. To be considered probative and credible, witness statements must do more than simply state that a witness knows an applicant and that the applicant has lived in the United States for a specific period. Their content must include sufficient detail from a claimed relationship to indicate that it probably did exist and that the witness, by virtue of that relationship, does have knowledge of the facts alleged. For instance, the witnesses do not state how they date their initial meeting with the applicant in the United States, or specify social gatherings, other special occasions or social events when they saw and communicated with the applicant during the requisite period. The witnesses also do not state how frequently they had contact with the applicant during the requisite period. The witnesses do not provide sufficient details that would lend credence to their claimed knowledge of the applicant's residence in the United States during the requisite period. In that several of the affiants attest to their friendship with the applicant and to his character, it is reasonable to expect that they would be able to provide details of their knowledge of their acquaintance and activities with the applicant, and how they maintained contact after they met. The affidavits are, therefore, not probative of the applicant's continuous residence.

Therefore, the applicant has failed to meet the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons must also be affirmed.

In addition, the record of proceedings reflects that on April 17, 2011, the applicant was arrested by the [REDACTED] Police Department, [REDACTED] and charged with "Driving While Intoxicated 49.04 PC" (Case No. [REDACTED]). The final court dispositions for the arrest indicates that on April 26, 2011, the applicant pled guilty/nolo contendere, was convicted of DWI, a Class B misdemeanor, and was sentenced to 30 days confinement in the [REDACTED] and fined. USCIS must address this conviction in any future proceedings.

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. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.