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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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MN

[REDACTED]

FILE:

[REDACTED]
[EAC 02 222 53291]

Office: VERMONT SERVICE CENTER

DEC 03 2007
Date:

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

*John D. Vaughan
for*

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC). An appeal from that decision was dismissed by the Chief of the Administrative Appeals Office (AAO). The case is now before the AAO on a motion to reopen and reconsider. The motion will be granted, and the appeal will again be dismissed.

The applicant is 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 on August 28, 2003, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. An appeal from the director's decision, filed on September 22, 2003, was dismissed by the AAO on June 24, 2005. The applicant, through counsel, filed the current motion to reopen the AAO decision on April 9, 2007.

On motion, counsel for the applicant submits a brief and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

- (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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial TPS application, filed on June 17, 2002, the applicant submitted:

1. A photocopy of an extract of his El Salvadoran birth certificate, with English translation, issued in El Salvador on April 17, 2001;
2. A partial photocopy of an identity document, with no English translation;¹

¹ Any document containing a foreign language submitted to CIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is

3. A letter, dated June 2, 2002, from [REDACTED] Providence, Rhode Island, stating that the applicant had been registered for more than two years;
4. Earnings statements from Community Fruitland Wholesale, indicating that the applicant was hired on May 14, 2002; and,
5. Correspondence from the United States Postal Service indicating that the applicant moved from [REDACTED] Providence, Rhode Island, to [REDACTED] Providence, Rhode Island, on May 15, 2002.

On July 16, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence in the United States during the requisite time period. In response, the applicant submitted:

6. An affidavit, dated August 11, 2003, from [REDACTED] Providence, Rhode Island, stating that she provided the applicant with board, food, clothing, transportation and money, as needed, from December 29, 2000 to July 1, 2002. Included with the affidavit were documents relating to [REDACTED]'s identity and photocopies of her 2001 and 2002 Internal Revenue Service (IRS) Forms 1040A, U.S. Individual Income Tax Returns;
7. A photocopy of his Rhode Island Identification card, issued on March 6, 2003; and,
8. Earnings statements from Ford and Messere, Inc., dated April 10, 2003 to July 24, 2003.

The director determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous presence in the United States during the requisite time periods and denied the application on August 28, 2003.

On appeal, the applicant submitted:

9. A letter, dated September 4, 2003, from C&C Landscaping and Tree Service, stating that the applicant had been employed by the company since April 2003; and,
10. Hand-written, consecutively numbered generic rent receipts, dated January 1, 2001 to June 1, 2002. The receipts indicate that they are for rent at [REDACTED] Providence, Rhode Island. The signature on the receipts was illegible.

The AAO dismissed the appeal on June 24, 2005, stating that:

“ ... [t]he applicant claims to have continuously lived in the United States from his date of entry on December 29, 2000, to the date he filed his TPS application on June 17, 2002. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim.

competent to translate from the foreign language into English. 8 C.F.R § 103.2(b)(3). As the applicant failed to comply with the aforementioned requirement, this document will not be considered in the rendering of this decision.

The church affidavit (No. 3) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was officially registered as a parishioner. Nos. 4, 5, 7, 8, and 9 are all dated on or after May 14, 2002. Furthermore, there are discrepancies encountered in Nos. 5, 6, and 10. No. 5 indicates that the applicant resided on Whitehall Street, Providence, Rhode Island, prior to May 15, 2002; No. 6 indicates that he lived, with board provided by [REDACTED], at [REDACTED] Providence, Rhode Island, from December 29, 2000 to July 1, 2002; and, No. 10 indicates that he paid \$150.00 monthly rent while living at the 71 Salina Street address from January 1, 2001 to June 1, 2001². These discrepancies have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. 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 application. Further, it is incumbent on the applicant 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)..."

On motion, counsel requests that the motion, which was not filed within the 30-day period prescribed in the regulations, be accepted as a matter of discretion under 8 C.F.R. § 103.5(a)(1)(i), primarily due to the typographical error in the AAO decision footnoted above. The motion will be granted, and the application will be reconsidered in light of the additional materials submitted.

On motion, counsel submits the following additional documentation:

11. A letter, dated February 12, 2007, from [REDACTED], pastoral assistant of Saint Patrick Church, Providence Rhode Island, stating that the applicant is a registered parishioner at his church, and that he has known the applicant for at least six years;
12. A letter, dated June 7, 2006, from [REDACTED], stating that the applicant lived with her at [REDACTED] Providence, Rhode Island, from December 29, 2000 to January 1, 2001;
13. A letter from [REDACTED], dated April 4, 2007, stating that he has known the applicant since his arrival in the United States on December 29, 2000, and that the applicant resided with his [REDACTED] sister, [REDACTED], at [REDACTED] Providence, Rhode Island. [REDACTED] further states that he assisted the applicant in moving from a basement apartment at [REDACTED], Providence, Rhode Island, to [REDACTED] Providence Rhode Island, in the summer of 2002.
14. A letter from [REDACTED], dated April 3, 2007, stating that he has known the applicant since the spring of 2002, and that he helped the applicant move from [REDACTED] Providence, Rhode Island, to [REDACTED], Providence, Rhode Island in the summer of 2002.

² This date should have read June 1, 2002, not June 1, 2001.

The documentation provided in Nos. 4, 5, 7, 8, and 9, above, establishes the applicant's presence and residence in the United States from in or about May 2002. The fact that the applicant's passport (No. 1), which contains his fingerprint and photograph, was issued in El Salvador on April 17, 2001, suggests that he was in El Salvador at the time of its issuance. The affidavits from acquaintances (Nos. 6, 12, 13 and 14) are not, by themselves persuasive evidence of residence and physical presence. As previously indicated, the rent receipts have little, if any, probative value in that they are hand-written, consecutively numbered, generic receipts with illegible signatures. While 8 C.F.R. § 244.9(a)(2)(vi) states that attestations by churches "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States.

Based on the entire record, it is concluded that the documentation submitted by the applicant is not sufficient to establish his qualifying continuous residence in the United States since February 13, 2001, and his qualifying continuous physical presence in the United States from March 9, 2001, to the date he applied for TPS in June 2002, as required for El Salvadoran nationals under 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed, and the decision of the AAO, dated June 24, 2005, will remain undisturbed.

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.