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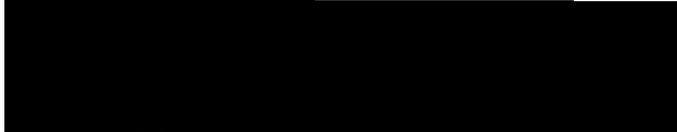
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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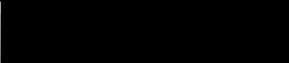


U.S. Citizenship
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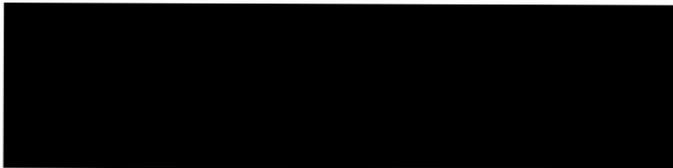
Office: CALIFORNIA SERVICE CENTER

Date: MAY 01 2009

[WAC 02 186 52731]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

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 seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1254.

The director determined that 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. The director, therefore, denied the application.

On appeal, the applicant submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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*;
- (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.

The term *continuously physically present*, as used 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 used 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial TPS application on May 15, 2002.

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 United States 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 record shows that the applicant filed his TPS application on May 15, 2002. On September 12, 2002, the applicant was provided the opportunity to submit evidence establishing his identity and evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application.

The applicant was also requested to submit the final certified court disposition for an arrest on January 23, 2000 by the El Monte, California Police Department for "DUI, Alcohol/Drugs," "Drive W/O License," and "False Proof, Finance Resp." The applicant, in response, provided the following:

1. A copy of his passport issued in Los Angeles, California on June 7, 2002.
2. The requested final court disposition and support documentation. According to the court disposition, on January 25, 2000, the applicant was convicted of "DUI Alcohol/Drugs W/ Bodily Inj," a misdemeanor.
3. Copies of 2001 W-2 Wage and Tax Statement issued in the name of [REDACTED] with Social Security Number [REDACTED]
4. A copy of an employment verification letter from [REDACTED] Manager for Caney Corporation.
5. A copy of a Payroll Earnings Record from Personnel Plus listing payments dated from June 1, 2001 to August 9, 2002 with Social Security Number [REDACTED]
6. Copies of a Declaration of Paternity, in Spanish, with no English translation, and a Certified Abstract of Birth and a Verification of Birth from Kaiser Permanente indicating the child's date of birth as December 10, 2000.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submits copies of paycheck stubs from Caney Corporation for pay periods ending February 16, 2001 and April 27, 2001; from Third Party Enterprises dated January 14, 2001, January 21, 2001 and January 28, 2001; 2001 Form W-2 from Caney Corporation and Personnel Plus; and 2002 Form W-2 from Staffing Services LLC with Social Security Number [REDACTED]

[REDACTED] states that the applicant had been employed by her company from April 1997 until he was laid off. However, this statement 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. It is further noted that the affiant did not indicate the exact periods of employment or the applicant's duties of employment.

The Declaration of Paternity is in Spanish with no English translation. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation, which the translator has certified as complete and accurate, and by the translator's certification that he or she is 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, the statements cannot be considered in the rendering of this decision. The other documentation pertaining to the birth of the applicant's child

can not establish the applicant's continuous residence and continuous physical presence in the United States during the requisite period. Similarly, while the Form W-2s may indicate the applicant was present in the United States in 2001 and 2002, these documents can not establish the applicant's continuous residence since February 13, 2001, and continuous physical presence in the United States from March 9, 2001 to the filing date of the TPS application.

It is also noted that the applicant indicated on his initial TPS application that he has no Social Security Number, but on later applications he listed his Social Security Number as [REDACTED]. On the pay stubs and W-2s the applicant submitted in response to the request for additional evidence and on appeal, the applicant lists his Social Security Number as [REDACTED]. However, this Social Security Number was not issued until 2003, for a resident in the State of Colorado. This discrepancy has not been explained. 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 will not suffice.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). It is also noted that on April 1, 2002, in San Julien, El Salvador, the applicant changed his name from [REDACTED] to [REDACTED]. This name change occurred outside of the United States. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the requisite timeframe. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.