

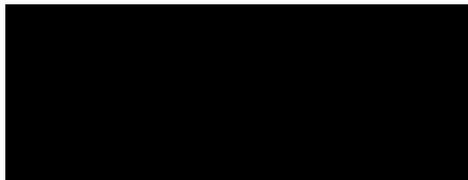
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

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APR 20 2004

FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE: Applicant:



APPLICATION:

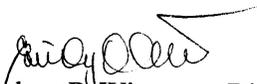
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 office that originally decided your case. Any further inquiry must be made to that office.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 submit sufficient evidence to establish that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant states that he has previously submitted evidence of his residence in the United States. The applicant furnishes copies of documentation that he had previously submitted, which is already part of the record of proceeding.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 condition described in paragraph (f)(2) of this section.

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.

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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 the director. 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 reflects that the applicant filed his application for TPS on August 17, 2001. He stated on the application form that he had entered the United States on September 15, 1996. In support of his application, the applicant submitted the following evidence:

- 1.) a copy of a July 26, 2001 letter from an individual whose name appears to be Mary E. Hillis, who stated she had known the applicant and his family since 1997; and,
- 2.) earnings statements dated March 19, 1999, September 24, 1999, and October 22, 1999.

On April 15, 2002, the applicant was provided the opportunity to submit evidence to establish that he had continuously resided in the United States since February 13, 2001, and that he had been physically present in the United States since March 9, 2001. The applicant, in response, submitted copies of the same documentation referenced in items Nos. 1 and 2, above.

The director determined that the applicant had failed to submit sufficient evidence to establish that he had met the continuous residence and physical presence criteria for TPS and denied the application on August 20, 2002. On appeal, the applicant states that he has previously submitted documentation in support of his claim. He asserts that the evidence he provided is sufficient to establish that he had met the continuous residence and

physical presence criteria for TPS. The applicant submits a copy of a postal receipt, PS Form 3811, which reflects that an article of mail was delivered to the Vermont Service Center on August 2, 2002. The applicant again furnishes copies of the earnings statements referenced in item No. 2, above; and another copy of a letter from the individual shown in item No. 1, above, whom the applicant now refers to as [REDACTED]

The three earnings statements submitted by the applicant were issued in 1999, prior to the requisite time period, and, therefore, do not establish that he has continuously resided in the United States since February 13, 2001, and been continuously physically present since March 9, 2001. The July 26, 2001 letter from a [REDACTED] or a [REDACTED] merely states that she has known the applicant and his family since 1997. However, she does not provide details on where she met the applicant, nor state how frequently she saw the applicant during the time she claims to have known him. The applicant claims to have lived in the United States since September 15, 1996. It is reasonable to expect that he would have some type of contemporaneous evidence for the period from February 13, 2001 to support his claim; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and 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 will be affirmed.

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.