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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: [Redacted]

Office: Vermont Service Center

Date: DEC 01 2004

IN RE: Applicant: [Redacted]

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

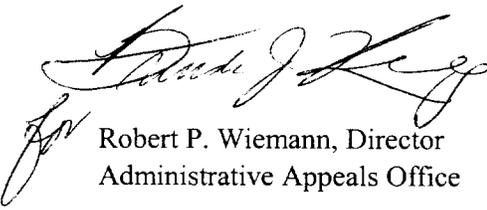
ON BEHALF OF APPLICANT:



PUBLIC COPY

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.

  
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 denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001, to the date of filing his application.

On appeal, counsel, on behalf of the applicant, asserts the applicant's claim of eligibility for TPS and submits evidence in support of his claim.

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.

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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, 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. 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 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 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).

On February 14, 2003, the applicant was requested to submit evidence establishing his residence in the United States as of February 13, 2001, and physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant responded to the request; however, he did not provide any evidence along with his response. The director determined that the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. Therefore, the director denied the application on June 24, 2003.

On appeal, counsel, on behalf of the applicant, states that the applicant responded to the director's request and submitted evidence in compliance with the request. Counsel further states that the applicant was unable to obtain documentation covering the time period between January 26, 2001 through July 16, 2001 (the date of filing his TPS application), because the applicant did not have acceptable identification to allow him to obtain employment, enter any educational institution, obtain a lease or medical treatment, etc. Counsel, also provides the following documentation on appeal: copies of the applicant's Employment Authorization cards; a copy of an affidavit dated March 6, 2003, from the applicant's mother, [REDACTED], who stated that the applicant had lived with her since January 26, 2001; a letter dated January 24, 2002, from the applicant's mother addressed to the National Visa Center indicating that the applicant is presently in the United States; copies of United States Postal Service receipts dated January 25, 2002 and January 28, 2002; and a copy of a Form I-797, Approval Notice, dated September 27, 1999, for a Form I-130, Immigrant Petition for Relative, Fiance(e), or Orphan, indicating the applicant is a beneficiary of an approved I-130 petition filed on his behalf by his mother.

The statements provided by the applicant's mother, [REDACTED] regarding the applicant's claimed presence in the United States are not supported by corroborative evidence. Affidavits from family members are not, by themselves, persuasive evidence of residence or physical presence. Counsel argues that the applicant was unable to obtain documentation covering the time period from January 26, 2001 to July 16, 2001, because the applicant did not have "acceptable" identification; and thus, could not obtain documentation. Counsel's argument is not convincing. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the statements regarding his claimed residence and physical presence in the United States; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. The applicant claims to have lived in the United States since January 26, 2001. The Form I-797 notice advising of the approval of the I-130 petition is not evidence that the applicant was in the United States.

The applicant has not submitted sufficient evidence to establish his qualifying residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, 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.