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

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DEC 14 2004

FILE: 

Office: CALIFORNIA SERVICE CENTER Date:

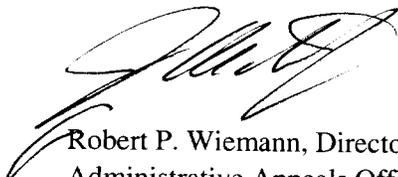
IN RE: Applicant: 

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.


Robert P. Wiemann, Director
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 denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001.

On appeal, the applicant's mother submits a statement and additional evidence.

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 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 § 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 parole; 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.

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. 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).

The applicant did not provide any evidence to establish his qualifying continuous residence in the United States with the Form I-821, Application for Temporary Protected Status.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 30, 2004.

On appeal, the applicant's mother, [REDACTED] states that the applicant, who is a minor child, has resided with her in the United States since September 9, 2001. She asks that he be granted TPS so he can stay in this country with her. She submits the following evidence:

1. a Form I-797C notice acknowledging receipt of a Form I-821 filed by [REDACTED] on May 7, 2001;
2. a Form I-797D notice dated August 26, 2001, informing [REDACTED] that her application for TPS had been approved;
3. a Form I-821 and a Form I-765, Application for Employment Authorization, both apparently signed by [REDACTED] on March 16, 2001;
4. a form letter dated February 25, 2004, from [REDACTED] Office Assistant at [REDACTED] in Los Angeles, California, stating that the applicant began attending classes at that school on September 3, 2002;
5. a photo identification card for the 2001-2002 school year from [REDACTED] Los Angeles Unified School District;
6. an immunization record indicating that a child, name and date illegible, received immunizations in Los Angeles, California, on December 7, 2001; January 10, 2002; February 5, 2002; and, June 8, 2002; and,
7. an affidavit dated February 24, 2004, from [REDACTED] stating that her nephew, [REDACTED] has lived in the United States at [REDACTED], Los Angeles, California, since September 9, 2001, under the custody of his mother.

The applicant has provided evidence to establish his residence in the United States since September 2001. However, since the applicant did not enter the United States until September 10, 2001, he cannot establish continuous residence in the United States since February 13, 2001. The applicant has not established that he satisfies the residence requirement described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant cannot establish continuous physical presence in the United States since March 9, 2001. Therefore, the application also may not be approved for this reason.

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.