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U.S. Citizenship  
and Immigration  
Services



FILE:



Office: TEXAS SERVICE CENTER

Date: JUN 8 2004

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.

*Cindy N. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that he has been physically In the United States since March 9, 2001.

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 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 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 December 20, 2002, the applicant was provided the opportunity to submit evidence establishing his physical presence since March 9, 2001, in the United States. The applicant, in response, provided letters from [REDACTED] president of Sunshine Industries and [REDACTED] M [REDACTED] states in his letter that the company has employed the applicant since April 30, 2001. Therefore, M [REDACTED] can only attest to the applicant's presence in the United States since April 30, 2001. His statement is of no probative value in determining if the applicant has been present in the United States since March 9, 2001.

Mr. [REDACTED] states that he has seen the applicant, his nephew, on a daily basis since his arrival from El Salvador on January 15, 2001. According to Mr. [REDACTED] the applicant lived with him and worked for him for a time. However, Mr. [REDACTED] fails to provide any contemporaneous evidence in support of this claim, i.e., pay stub, tax withholding information, etc. He also failed to provide the address where he claimed the applicant resided. Thus, Mr. [REDACTED] letter is of little or no probative value.

Consequently, the applicant did not present sufficient evidence of his physical presence in the United States since March 9, 2001. Therefore, the director denied the application.

On appeal, the applicant states that he is appealing the decision because he has resided and been physically present in the United States since before March 9, 2001. The applicant also provides documentation in support of this claim. Specifically, he submitted letters from [REDACTED] and [REDACTED] an administrative assistant at Sunshine Industries. The applicant also furnished photocopies of rent receipts and an Internal Revenue Service (IRS) Form W-2 wage and Tax Statement for 2001.

In his letter, Mr. [REDACTED] asserts that he has known the applicant since January 2001. Mr. [REDACTED] claims that he has known the applicant since January 15, 2001. According to Ms. [REDACTED] her company has employed the applicant since April 30, 2001. The statements from Mr. [REDACTED] and Mr. [REDACTED] regarding the applicant's claimed presence in the United States since January 2001 are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits from acquaintances are not, by themselves, persuasive of residence or physical presence. The applicant, has, therefore, failed to establish that she has met the continuous residence and physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). As stated above, the [REDACTED] statement can only attest to the applicant's presence in this country since April 30, 2001

The dates on the copies of the rent receipts are from March 1, 2001 to October 1, 2001. Similarly, the hand-written generic rent receipts are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; again, however, no such evidence has been provided. The IRS Form W-2 only corroborates the letters from Ms. [REDACTED] and Mr. [REDACTED] who claimed that the applicant was employed from April 30, 2001, but does not establish continuous physical presence and residence during the requisite periods.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for residence and physical presence 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.