



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED]

Office: Vermont Service Center

Date: [REDACTED]

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:

[REDACTED]

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 denied the application because the applicant failed to establish he had: 1) entered the United States prior to February 13, 2001; 2) continuously resided in the United States since February 13, 2001; and 3) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserted his claim of eligibility for TPS and submitted 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 who is a national of a foreign state is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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, or
 - (2) Registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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).

In the Notice of Intent to Deny dated August 12, 2003, the director requested the applicant to submit evidence establishing his residence as of February 13, 2001, and physical presence since March 9, 2001, in the United States, to the date of filing his application.

On September 3, 2003, the applicant responded to the director's request. It is noted that the applicant submitted his response on a Form I-129B, Notice of Appeal to the Administrative Appeals Unit (AAU). The applicant provided the following documentation:

1. An affidavit dated August 29, 2003, from [REDACTED] who stated that the applicant had rented a room in her home since November 2000, and that the applicant had shared the room with his mother.
2. An affidavit dated August 29, 2003, from [REDACTED] who stated that she had known the applicant and his mother since he arrived in the United States in November 2000.
3. Copies of his bank statements from BB&T dated March 13, 2003 to July 16, 2003.
4. Copies of his earnings statements from [REDACTED] reflecting pay periods from February 10, 2003 to August 19, 2003.
5. Copies of his Federal and Virginia State Income Tax forms for the year 2002.
6. A copy of his 2002 IRS Form W-2, Wage and Tax Statement.
7. A copy of his vehicle's temporary certificate bearing a sale date of June 27, 2003.

On February 4, 2004, the director denied his application. In his denial, the director stated that the record did not include a response to the notice of intent to deny his application. On appeal, the applicant reasserted his claim and indicated that he had already provided all the information requested.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his 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.