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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 02 048 50597]

IN RE:

Applicant:



APPLICATION:

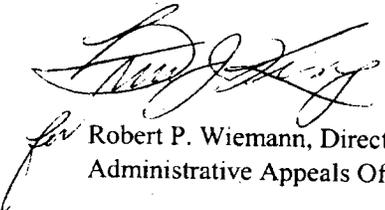
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 establish he had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant meets the criteria for TPS.

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 September 9, 2006, 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 record shows that the applicant filed his TPS application on November 8, 2001. On April 9, 2003, the applicant was provided the opportunity to submit evidence establishing continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit a photo identity document. The applicant, in response, provided a statement from [REDACTED] and a copy of a State of Virginia driver's license [REDACTED].

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. The director also decided that evidence initially submitted was not credible. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant is eligible for TPS. According to counsel, the applicant submitted the requested evidence. Counsel also stated that the director, "without notice, questioned the validity of evidence submitted with the initial application for TPS, and deemed 'not credible' evidence that had been accepted." The applicant also submits another statement from [REDACTED]. In this letter [REDACTED] states that his company has employed the applicant, aka [REDACTED] since December 1997 assisting landscapers. Although the applicant listed the alias [REDACTED] in his application, neither the applicant or [REDACTED] provided any evidence that the applicant and [REDACTED] are one and the same. Furthermore, the applicant indicated on his TPS application that he entered the United States in March 1998, four months after [REDACTED] asserts that the applicant began to work for his company. Therefore, the statement from [REDACTED] offers conflicting information and is therefore of little or no probative value.

The director correctly determined that the evidence provided did not establish that the applicant had been continuously physically present in the United States from March 9, 2001 to the date of filing the application. Despite counsel's contention, the evidence the applicant initially provided had only been "accepted" until its validity could be established.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous 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.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence during the requisite time period. Therefore, the application must be denied for this reason as well.

It is also noted that the record contains a Form I-205, Warrant of Removal and Deportation, dated June 18, 1996 under file # [REDACTED]. It does not appear that the warrant was executed.

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.