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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted]
[SRC 02 041 56588]

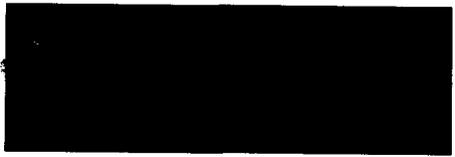
Office: Texas Service Center

Date: APR 28 2005

IN RE: Applicant: [Redacted]

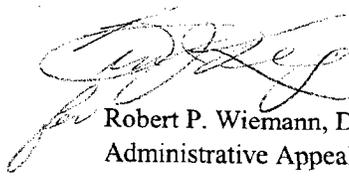
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, 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 denied the application because the applicant failed to establish his qualifying residence and physical presence in the United States during the requisite periods.

On appeal, the applicant, through counsel, asserts his eligibility for TPS and submits documentation 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 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).

On January 8, 2003, the applicant was requested to submit evidence establishing his identity and nationality. In response, the applicant provided a copy of his Texas Driver License and copies of the biographical pages of his passport issued to him in El Salvador on January 17, 2001. Subsequently, on March 17, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The director, however, determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 23, 2003. It is noted that the director inadvertently stated that the record did not contain documentation indicating residence and physical presence for Honduras and Nicaragua TPS. However, the director correctly stated the continuous residence and continuous physical presence dates for El Salvador TPS applicants.

On appeal, the applicant, through counsel, states that he is in a common-law relationship with Ms. [REDACTED] and that he has to provide for her. The applicant also submits the following documentation along with his appeal: a copy of Ms. [REDACTED] Authorization card; a letter dated July 30, 2003, from Mr. [REDACTED] Director of [REDACTED] in Houston, Texas, who stated that he met the applicant in January 2001, and that the applicant became a student of his in October 2001; an affidavit dated August 12, 2003, from Mr. [REDACTED] who stated that he has known the applicant since February 2001, and that the applicant has lived in Houston, Texas since that time; and a letter from Ms. [REDACTED] who stated that she has known the applicant since December 2000.

The statements provided by Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these statements covering the requisite time periods for El Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. It is noted that Mr. [REDACTED] Ms. [REDACTED] did not state whether their acquaintance with the applicant was in the United States. In addition, the applicant claims to have lived in the United States since October 12, 2000. However, the applicant's passport was issued to him in El Salvador on January 17, 2001. Therefore, the applicant could not have continuously resided in the United States since October 12, 2000 as he had claimed on his TPS application. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision to deny the application for TPS on these grounds 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.



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ORDER: The appeal is dismissed.