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FILE:



[EAC 01 207 52121]

Office: VERMONT SERVICE CENTER

Date: **AUG 09 2005**

IN RE:

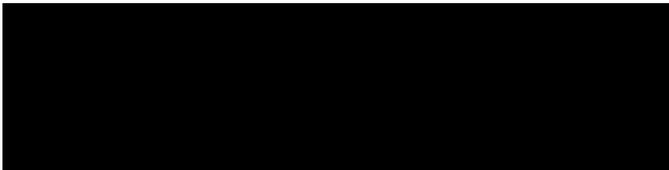
Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wifmann".

Robert P. Wifmann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, and it 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.

On May 13, 2003, the director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence. The director informed the applicant that he could file a motion to reopen within 33 days.

On June 13, 2003, the applicant filed a motion to reopen and reconsider.

On August 4, 2003, the director granted the motion and provided the applicant with an opportunity to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On October 1, 2003, the director denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001.

On October 20, 2003, the applicant filed an appeal from the director's decision dated October 1, 2003. On appeal, counsel for the applicant asserts that the director made a legal and factual error in denying the applicant's TPS application.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 June 8, 2001. On February 21, 2003, the applicant was provided the opportunity 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 the application. The director denied the application on May 13, 2003, after determining that the applicant had abandoned his application for failing to respond to a request for evidence. However, the applicant did respond to the notice; his response was received at the Vermont Service Center on April 5, 2003. In response

to the notice, the applicant submitted affidavits dated April 3, 2003, from [REDACTED] who states that she is the applicant's mother, and from [REDACTED] who states that she is the applicant's aunt. [REDACTED] both state that the applicant came to the United States in 1996 and lived with them at [REDACTED], New York, until February 2002. The applicant also submitted a photocopy of an MCI billing statement dated Sept 3, 2001; photocopies of three earnings statements from Bonded Brakes, Inc., dated August 17, 2001, September 7, 2001 and September 28, 2001; and a generic rent receipt dated January 1, 2001. The director erroneously denied the application due to abandonment.

On August 4, 2003, the director reopened the matter and provided the applicant with a second opportunity 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 filing of the application. In response, the applicant provided:

1. A copy of the first page of his passport and, a copy of a New York State Driver License issued on March 26, 2003.
2. A copy of an Internal Revenue Service (IRS) 2001 Form 1040EZ Income Tax Return for Single and Joint Filers with no Dependents, a Form IT-201 New York State Resident Income Tax Return, a 2001 W-2 Wage and Tax Statement and a New York State Department of Taxation and Finance check receipt dated March 8, 2002.
3. A copy of a hand-written generic rent receipt dated January 1, 2001.
4. Letters from the applicant's mother [REDACTED] and his aunt [REDACTED]
5. Copies of pay stubs from [REDACTED] dated August 17, 2001, August 24, 2001, September 7, 2001, September 21, 2001, and September 28, 2001.
6. A copy of a bill from MCI dated September 3, 2001, and a copy of a bill from Sprint PCS dated March 11, 2003.
7. A copy of a mailing envelope from the Brentwood Union Free School District, Brentwood, New Jersey, postmarked September 4, 2002.

The tax documentation indicates the applicant was present in the United States in 2001, but fails to establish that the applicant's continuous residence in the United States since February 13, 2001 or his continuous physical presence in the United States since March 9, 2001. The applicant's mother and aunt both assert that the applicant came to the United States in 1996 and lived with them until February 2002. The rent receipts indicate a rent payment on January 1, 2001. However, the statements, as well as the 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 documents; however, no such evidence has been provided. The remaining evidence indicates the applicant's presence in the United States in August 2001 at the earliest. This is subsequent to the dates required to establish entry, continuous residence and continuous physical presence during the qualifying period.

The applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel claims that the director erred in denying the application because the applicant is prima facie eligible for TPS benefits. However, counsel does not provide any additional evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

The applicant has failed 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.