



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 245 51688]

Office: VERMONT SERVICE CENTER

Date: **AUG 15 2005**

IN RE: Applicant: [REDACTED]

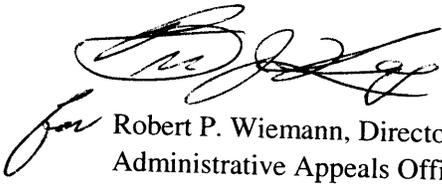
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


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 stated to be 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 continuously resided in the United States since February 13, 2001 and been continuously physically present in the United States since March 9, 2001.

On appeal, counsel states that the director erred in denying TPS to the applicant and that the evidence of record along with the evidence submitted on appeal proves that he is eligible for the requested benefit.

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 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.

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. An extension of the TPS designation has been granted 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).

Upon initial submission, the applicant submitted no documentation to establish continuous residence or continuous physical presence in this country. On November 4, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. An affidavit dated November 25, 2003 from [REDACTED] indicating that the applicant was his tenant at his property in Brentwood, Maryland from January 15, 2001 until March 31, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 3, 2004.

On appeal, counsel reasserts the applicant's claim and submits:

2. An undated statement (not notarized but labeled as an affidavit) from [REDACTED] the Manager of Chuck E. Cheese [REDACTED] M [REDACTED] states that the applicant worked with that organization since December 17, 2001 as a cook.

3. An undated statement (not notarized but labeled as an affidavit) from [REDACTED] Ms. [REDACTED] states that she has known the applicant since February 5, 2001 and that she believes he has been continuously residing and has been physically present in the United States since that date.

4. An undated statement (not notarized but labeled as an affidavit) from [REDACTED] Mr. [REDACTED] states that he is the coach of a soccer team in La Plata, Maryland and certifies that the applicant played midfield for the team from April 20 1001 (sic) through July 2003.

5. A letter dated March 11, 2004 from [REDACTED] Manager of a Ruby Tuesday, Inc. restaurant at an unspecified location. [REDACTED] corporation has employed the applicant since July 2001.

The statement provided by Mr. [REDACTED] at Item #1 above is not supported by corroborative evidence such as rental receipts. Also, the statements from Ms. [REDACTED] at Item #3 and from Mr. [REDACTED] at Item #4 are not, by themselves, persuasive evidence of residence or physical presence. In addition, the employment letters from Mr. [REDACTED] and Ms. [REDACTED] have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in affidavit form and signed and attested to by the employers under perjury. Additionally, they do not provide the address where the applicant resided during the periods of his employment.

The applicant has not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant indicates on his Form I-821, Application for Temporary Protected Status, that he did not enter the United States until June 3, 2001. Therefore, he cannot establish continuous residence in the United States since February 13, 2001, or continuous physical presence in the United States since March 9, 2001. Again as the provisions of 8 C.F.R. § 244.2(b) and (c) (*supra*) have not been met, and the application is denied for this additional reason.

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.