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U.S. Citizenship
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Services



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FILE: [REDACTED]
[EAC 01 190 54165]

Office: VERMONT SERVICE CENTER

Date: **AUG 19 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: SELF-REPRESENTED

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, 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 that he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant asserts his claim of eligibility 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 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 parole; 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).

The applicant initially submitted the following documentation along with his TPS application:

1. A photo copy of the applicant's Virginia Identification Card issued on October 9, 1999; and,
2. A copy of a receipt from Gigante Express, Inc. dated August 9, 1999 and bearing the applicant's name as sender.

On January 13, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001. The applicant, in response, provided the following documentation:

3. Medical records showing that the applicant was hospitalized in Washington University Hospital from May of 2003 to August of 2003 for injuries received on the job;
4. A copy of a receipt from the Social Security Administration dated July 2, 2001 and showing that the applicant applied for a Social Security card;
5. A copy of a statement of account dated September 4, 2002 and bearing the applicant's name and Washington, DC address;
6. A copy of a renewal notice from the District of Columbia Department of Motor Vehicles dated July 13, 2002 and bearing the applicant's name and Washington, DC address; and,
7. A copy of a statement of account dated July 8, 2003 and bearing the applicant's name.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 13, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

8. Copies of hospital records and Worker's Compensation Claims statements pertaining to the applicant's on-the-job injury received in May of 2003; and,
9. A copy of a Washington Gas customer deposit receipt dated April 4, 2002 and bearing the applicant's name and Washington, DC address, and a Washington Gas bill payment receipt dated November 26, 2002..

The applicant has failed to submit sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001. Evidence described as Numbers 1 and 2 above are dated in 1999, and are therefore dated prior to the requisite time period. All other evidence submitted by the applicant is dated subsequent to the requisite time period.

The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has also failed to establish continuous physical presence in the United States since March 9, 2001. Therefore, the application must also be denied for this 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.