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FILE:

[REDACTED]  
[EAC 01 198 51197]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 25 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:

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.

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

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again 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 originally denied the application on August 28, 2003, because the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. The applicant appealed the director's decision on November 10, 2003. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on March 4, 2004.

On appeal, counsel submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate 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 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 May 16, 2001. Because insufficient evidence was furnished to establish eligibility for TPS, the applicant was requested on August 4, 2003, to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. In response, the applicant submitted:

- (1) Copies of pay statements for pay periods from June 17, 2000 through August 28, 2000, inclusive; from December 9, 2001 to December 15, 2001; and from February 10, 2002 to February 16, 2002.
- (2) Copies of the Prince William County Public School Adult Education receipt for tuition and books, and student identification card valid from September 18, 2000 to December 15, 2000.
- (3) Copies of various receipts and bills all dated in August 2003 and October 2003.

The director determined that the applicant did not provide evidence for the period of time from December 2000<sup>1</sup> to May 2001, and denied the application on August 28, 2003.

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<sup>1</sup> The director erroneously indicated December 2000; however, as provided in 8 C.F.R. § 244.1, the applicant is only required to establish continuous residence since February 13, 2001.

The applicant appealed the director's decision on November 10, 2003. He submitted:

- (4) Copies of Form W-2 Wage and Tax Statements for the years 2000 and 2001, and Form 1040 Income Tax Return for 2001.
- (5) Copies of pay statements previously furnished and listed in No. 1 above, including additional pay statements for pay periods from December 16, 2001 through January 5, 2002, inclusive.
- (6) A copy of his El Salvadoran passport issued in Washington, DC, on July 25, 2001.
- (7) A copy of an envelope addressed to the applicant containing an illegible postmark date.

Because the appeal was filed later than the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on March 4, 2004.

The applicant appealed the director's decision on April 6, 2004. He states that he is attaching a copy of his employment authorization card to establish that his application had been approved. He asserts that he has resided in the United States since February 13, 2001, and has been physically present from March 9, 2001, to the date of filing.

The fact that the applicant was issued employment authorization is not evidence that he was granted TPS. The applicant, in this case, was granted employment authorization under 8 C.F.R. § 274a.12(c)(19) as an alien with a pending application for TPS.

The applicant has established that he was present in the United States as of December 15, 2000 (No. 2 above). However, as determined by the director, the evidence furnished by the applicant failed to establish continuous residence and continuous physical presence during the requisite period, from February 13, 2001, to the date he filed his application on May 16, 2001.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.