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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FEB 07 2005

FILE:



Office: Vermont Service Center

Date:

[EAC 01 155 53354]

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.

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

On appeal, counsel asserted that the applicant had never received the notice from the Immigration and Naturalization Service (the "Service") requesting information. Additionally, counsel indicated that the applicant had informed the Service of his change of address on his application for TPS re-registration.

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 temporary protected status 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.

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 entry on or prior to February 13, 2001, 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 March 9, 2005, 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).

Along with his initial application for TPS, the applicant, through counsel, provided the following documentation:

1. A copy of the biographical page of his Salvadoran passport issued February 11, 2000.

2. A copy of his Virginia driver's license issued March 20, 2000.
3. A copy of his Salvadoran birth certificate along with an English translation notarized on March 15, 2001.

On August 30, 2001, the applicant, through counsel, was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. In response, counsel provided the following documentation:

4. A copy of a bill for translation services dated March 10, 2001, from [REDACTED]
5. Resubmitted copies of documents Nos. 1, 2, and 3 above.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 21, 2003.

On appeal, counsel stated that neither the applicant, nor his attorney, received the notice requesting information from the Service. Counsel also indicated that the applicant had informed the Service of his address change through his TPS renewal. No additional evidence was submitted along with the appeal.

A review of the record shows that the applicant filed his initial application for TPS on March 19, 2001. Along with his application, counsel provided a Form G-28, Notice of Entry of Appearance As Attorney or Representative, indicating the attorney's address in Arlington, Virginia. On August 30, 2001, the applicant, through counsel, was requested to submit additional evidence in support of his application for TPS. In response to this request, the Service received additional documentation as detailed in Nos. 4 and 5 above.

On September 23, 2002, the Service received from the applicant a subsequent application for TPS along with a Form G-28, reflecting a new address for his attorney, now in Herndon, Virginia.

The director's decision on the initial application for TPS dated March 10, 2003, was sent to counsel's previous address in Arlington, Virginia. The director erred by sending that decision to this address. However, it appears that counsel, in fact, received the director's decision, and subsequently filed a timely appeal. No additional evidence was submitted with the appeal.

The copy of the English translation of the applicant's birth certificate and the bill for translation services as detailed in Nos. 3 and 4 above, respectively, do not establish the applicant's qualifying residence and physical presence in the United States during the requisite periods. It is reasonable to expect that the applicant would have additional evidence in support of his claim since he apparently has been in the United States since June 20, 1996.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). 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.