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U.S. Citizenship  
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M

FILE: [REDACTED]  
[EAC 02 158 52027]

Office: Vermont Service Center

Date: FEB 14 2005

IN RE: Applicant: [REDACTED]

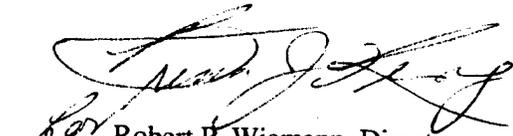
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.

  
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 (AAO) 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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant, through counsel, asserts his claim of eligibility for TPS and submits evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 under § 244.3;
- (e) is not ineligible under § 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.
- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 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 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).

On February 7, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. An affidavit dated February 20, 2003 from [REDACTED] who stated that she had known that the applicant has resided in the United States since 1989.
2. An affidavit dated February 20, 2003 from [REDACTED] who stated that he had known that the applicant has resided in the United States since September 2000.
3. An affidavit dated February 20, 2003 from [REDACTED] who stated that he had known that the applicant has resided in the United States since May 1996.
4. Copies of hand-written rent receipts dated December 2001, February 1, 2001, March 1, 2001, May 1, 2001, July 1, 2001, and December 1, 2001.
5. A copy of the envelope postmarked on February 12, 2003, from the Immigration and Naturalization Service.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 30, 2003.

On appeal, counsel for the applicant reasserted his claim and submitted the following documentation:

6. Copies of the applicant's Employment Authorization Cards bearing validity dates from May 13, 2002 to September 9, 2002, and March 10, 2003 to September 9, 2003.
7. A copy of a business card from [REDACTED] in Little Neck, New York.
8. A copy of a business card from [REDACTED] in Flushing, New York.
9. Copies of hand-written receipts dated April 2, 2002, July 17, 2002, and February 24, 2003 from [REDACTED] & Services in Flushing, New York.
10. Copies of the return receipt reflecting a received date of November 1, 2002 by the Immigration and Naturalization Service.
11. Copies of previously submitted affidavits as detailed in Nos. 1, 2, and 3 above along with Spanish templates.
12. An affidavit dated May 13, 2003 from [REDACTED] who stated that he had known the applicant since he arrived in the United States on November 24, 2000. Mr. [REDACTED] also indicated that the information provided previously in the signed affidavit dated February 20, 2003 was incorrect.
13. An affidavit dated May 16, 2003 from [REDACTED] who stated that the applicant had arrived in the United States in November 2000. [REDACTED] also indicated that the information provided previously in the signed affidavit dated February 20, 2003 misrepresented the truth.
14. Copies of the applicant's telephone bills dated January 14, 2002 and February 13, 2002.
15. An affidavit dated April 2, 2002, from [REDACTED] who stated that she had known the applicant since he arrived in the United States in November 2000.
16. A letter dated May 2, 2003 from Reverend [REDACTED] Pastor of the St. Michael's Church in Flushing, New York, who stated that the applicant came to the United States on November 24, 2000.
17. A copy of the applicant's discharge instructions dated December 10, 2000, from the Flushing Hospital Emergency Department in Flushing, New York.

18. Copies of the applicant's Earnings Statements for pay periods ending on September 7, 2002, November 23, 2002, and December 28, 2002.
19. Copies of the applicant's IRS Form W-2, Wage and Tax Statement, for the year 2002.

On appeal, counsel for the applicant stated that the applicant was misrepresented by causes beyond his control. Further, the applicant provided a statement indicating that he ignored the contents of the affidavits originally submitted in support of his application for TPS as detailed in Nos. 1, 2, and 3 above, and that the information contained in the affidavits was incorrect. The applicant has submitted new affidavits from the original affiants as detailed in Nos. 12 and 13 above.

The copies of the hand-written rent receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since November 24, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The affidavit from Reverend [REDACTED] as detailed in No. 16 above, has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the entire period of his involvement with the church.

The statements in Nos. 12, 13, and 15 as detailed above regarding the applicant's claimed presence in the United States before February 13, 2001, are not supported by credible evidence over the requisite periods for TPS.

The only piece of evidence submitted that may suggest the applicant's presence in the United States is the copy of the applicant's discharge instructions as detailed in No. 17 above. This document may suggest that the applicant was in the United States during the year 2000. However, the burden is on the applicant to establish his continuous residence since February 13, 2001, and his continuous physical presence since March 9, 2001.

The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria 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.