



U.S. Citizenship
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JUN 06 2005

FILE:



[EAC 01 196 53255]

Office: VERMONT SERVICE CENTER

Date:

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.

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 (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 his continuous residence and his continuous physical presence in the United States during the requisite periods.

On appeal, the applicant provides a brief statement and additional documentation in support of the appeal.

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 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 section 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.
- (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 issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 14, 2001.

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).

In a notice of intent to deny, dated July 22, 2003, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes. In response, the applicant provided several affidavits and notices from the Service, dated May 2001 and November 2001.

The director found that the documentation submitted, in response to the notice of intent to deny, was not sufficient in establishing the applicant's continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director found that the affidavits were "not insufficient alone to prove eligibility." The director denied the application on September 25, 2003.

On appeal, the applicant states that he never received any denial letter or "intend" to deny letter. The applicant also states that he believes that he has submitted enough documentation apart from his own statement. The applicant submits: a photocopy of a letter from The MGH Fund, dated March 4, 2003; a notice, dated January 13, 2003, from Mass General Physicians Org., Inc.; Boston, Massachusetts, a claim letter from DET, Boston, Massachusetts, dated January 22, 2003; a letter from Walker Associates, Inc., Boston, Massachusetts, dated March 3, 2003; two Verizon bills dated February 20, 2003, and May 2, 2003; one Verizon bill with an illegible date; three Western Union payment receipts, dated January 24, 2003, February 4, 2003, and February 26, 2003; a letter from the Social Security Administration, Chelsea, Massachusetts, dated October 11, 2001; a letter from the Traditional Natural Center, Inc., East Boston, Massachusetts, dated October 5, 2002; a bill from Quest Diagnostics Incorporated, Baltimore, Maryland, dated January 17, 2003; and a bill from "Mass Gen'L Hospital," Boston, Massachusetts dated February 18, 2003; and, a bill from East Boston Neighborhood Health Center, East Boston, Massachusetts, dated January 14, 2003.

The majority of the documentation presented on appeal is dated almost two years beyond the onset of the qualifying timeframes. These documents are not sufficient in demonstrating the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. Further, these documents do not add any additional support to the affidavits previously submitted and do not meet the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The applicant has failed to provide sufficient evidence 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 TPS on these grounds 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.