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U.S. Citizenship
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Services

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JUN 06 2005

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 02 048 55274]

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 on appeal. The appeal will be dismissed.

The applicant claims to be 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 been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant provides a brief statement and some 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 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.

The issue raised by the director to be addressed in this proceeding is whether the applicant has been continuously physically present in the United States since March 9, 2001.

In a notice of intent dated December 4, 2002, the applicant was requested to submit evidence of his continuous physical presence and his continuous residence in the United States during the requisite timeframes.

The director found that the applicant, in response to the notice of intent to deny, provided evidence that was not sufficient or reliable to demonstrate the applicant's continuous physical presence in the United States during the requisite timeframes. The director denied the application on March 28, 2003. It is noted that the director's decision merely states that the applicant failed to establish his continuous physical presence in the United States during the requisite timeframe. The director's decision did not cite the additional ground in the

notice of intent to deny, which was the applicant's failure to establish his continuous residence in the United States during the requisite timeframe. This issue will be addressed beyond the decision of the director.

On appeal, the applicant states that he has "been in this country since he came," and that he sent the evidence that was asked for. The applicant submits: an identification card issued in Virginia on February 21, 2003; a copy of a Western Union receipt dated October 25, 2001; and copies of two documents that were previously submitted.

The applicant has provided no additional documentation on appeal that would sufficiently demonstrate his continuous physical presence in the United States during the requisite timeframe. The identification card and Western Union receipt are not sufficient in demonstrating the applicant's day-to-day living in the United States from the onset of the qualifying timeframes to the filing date of his TPS application. The documentation presented on appeal is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record contains no substantial documentary evidence to demonstrate that the applicant has been continuously physically present in the United States since March 9, 2001, to the time of the filing of his TPS application. Consequently, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

Beyond the decision of the director, for the reasons stated above, the documentation contained in the record is not sufficient to establish that the applicant has been continuously residing in the United States since February 13, 2001, to the time of the filing of his TPS application on November 10, 2001. Therefore, the application must also be denied for this reason.

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.