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U.S. Citizenship
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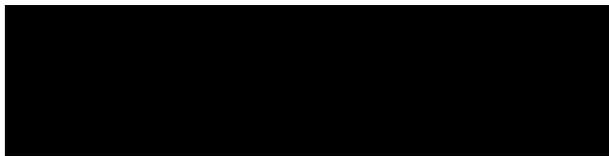
Office: VERMONT SERVICE CENTER

Date:

JUN 07 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.

Cindy M. Gomez 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 qualifying continuous residence and his continuous physical presence in the United States during the requisite periods. The director also determined that the applicant failed to submit evidence of his nationality.

On appeal, the applicant submits a statement. On the appeal notice, the applicant indicated that a brief and/or additional evidence would be submitted within 30 days from the date of the appeal. To date, no additional evidence has been received into the record, and the record must be considered complete.

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.

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. 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on August 29, 2002.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On May 1, 2003, the applicant was requested to submit evidence establishing his: continuous residence in the United States since February 13, 2001; continuous physical presence in the United States since March 9, 2001; and, nationality. The director also incorrectly requested the applicant to submit evidence that he had re-registered for TPS between September 9, 2002 and November 12, 2002; in fact, the applicant was submitting his initial TPS application during the initial registration period for El Salvadorans. Therefore, this statement of the director is withdrawn. In a second letter dated June 17, 2003, the director again requested the applicant to submit evidence of his nationality.

In response to these requests, the applicant provided: a statement that he has been a guest of his brother and was supported by his brother until he was granted employment authorization; an affidavit from his brother attesting that the applicant arrived in the United States around July 2000, and that he supports the applicant, who obtained employment in October 2002, after receiving a social security card and employment authorization; the applicant's Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, for 2002; the applicant's IRS Form W-2, Wage and Tax Statement, for 2002; and, a Western Union receipt dated March 23, 2003.

The director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on August 22, 2003.

On appeal, the applicant states that he entered the United States on June 20, 2000, and believes that he meets the requirements for TPS. He states that he has submitted evidence that he was in the United States during the requisite periods. The applicant also states that additional documents will be submitted; however, no additional evidence has been submitted in support of the appeal.

Other than the affidavit from his brother, the applicant has not submitted any evidence for the year 2001. The regulations at 8 C.F.R. § 244.9, do not provide that uncorroborated affidavits and statements by relatives or acquaintances may suffice to establish an applicant's continuous residence and continuous physical presence in the United States. In addition, the applicant has submitted insufficient evidence for the year 2002. The applicant 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 on these grounds will be affirmed.

The director also determined that the applicant had failed to submit evidence of his nationality, and denied the application for this reason.

The record includes photocopies of the following documentation: the biographic page of the applicant's El Salvadoran passport issued on March 22, 2002, in El Salvador at San Miguel (DGM); a birth certificate issued on July 27, 2003, from the [REDACTED] with English translation; and, his El Salvadoran national identification card issued on August 13, 2002.

The applicant has submitted sufficient evidence of his nationality, and, thereby, has overcome this finding of the director.

It is noted that the issuance of the applicant's passport and national identity document in El Salvador in 2002, further support a finding that the applicant has not been continuously physically present in the United States during the requisite period.

The applicant also indicated on his Form I-821, Application for Temporary Protected Status, that he had been under immigration proceedings in "1996." The Federal Bureau of Investigation (FBI) fingerprint results report pertaining to the applicant's fingerprints reflects that the applicant was placed in deportation proceedings under the name [REDACTED] on December 4, 1997, by the USINS, Baltimore, Maryland. Documentation pertaining to these proceedings has not been submitted by the applicant and is otherwise not included in this record of proceeding.

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.