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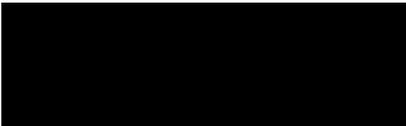
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U.S. Citizenship  
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FILE:



[EAC 01 162 55752]

Office: VERMONT SERVICE CENTER

Date: JUN 15 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.

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 that 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 asserts that he has been in the United States since November 12, 1998 and that he has submitted sufficient evidence to demonstrate his continuous physical presence and continuous residency.

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 TPS 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.

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. An extension of the TPS designation has been granted 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 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).

On October 18, 2001, and February 13, 2002, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant, in response, provided the following documentation:

1. An affidavit of support from [REDACTED] dated June 26, 2001, in which he stated that he had known the applicant since he was born and that they lived together at [REDACTED] Hempstead, New York since November of 1991;
2. An affidavit of support from [REDACTED] dated April 24, 2002, in which she stated that she had known the applicant since June 3, 2000, that he is honest, hardworking, and dependable, and that he resides at [REDACTED];
3. An affidavit of support from [REDACTED] dated April 24, 2002, in which he stated that he had known the applicant since December 24, 2000, that he is honest, hardworking, and dependable, and that he resides at [REDACTED];
4. Payroll records from MES Enterprises which show that the applicant received wages during November and December of 2001, and January and March of 2002; and

5. A copy of IRS Form W-2 reflecting wages received in 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 28, 2002. The director stated that the evidence showed that the applicant was employed only during the second half of 2001, and that he had submitted two good character references.

The applicant subsequently submitted a [REDACTED] dated April 25, 2003 along with the following documentation:

6. An affidavit of support from [REDACTED] dated April 15, 2003, in which he states that the applicant has lived with him at [REDACTED] October of 1997 and that the applicant has been honest, responsible, and hard working;
7. A copy of IRS Form 1040EZ for 2001 which was self-prepared by the applicant;
8. A copy of the applicant's Resident Income Tax Return for 2001;
9. A copy of the applicant's IRS Form W-2 for the 2002 tax year;
10. A copy of the applicant's IRS Form 1040 for the 2002 tax year;
11. A copy of AT&T utility bills covering the period of January through March of 2003; and
12. Payroll records from MES Enterprises which show that the applicant received wages for one week during the months of March, May, August, and November of 2002.

The director again determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 24, 2003.

On appeal, the applicant reasserts his claim and submits the following documentation:

13. A copy of the applicant's IRS Form W-2 Wage and Tax Statement for 2001;
14. A letter of employment from the assistant manager of [REDACTED] dated August 7, 2003, in which he states that the applicant has worked for the Pub since February 2001; and
15. A copy of the applicant's Employment Authorization card which indicates that he was authorized to work in the United States from May 8, 2001, to September 9, 2002.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to March 28, 2001. The affidavits 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 affidavits 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 25, 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these affidavits; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.2(b). Further, the tax records submitted by the applicant indicate that he received wages during the 2001 tax year; however, they do not indicate when the applicant began receiving

wages for that year. In addition, the payroll records submitted by the applicant indicate that he began working for MES Enterprises in November of 2001, which is beyond the applicable residency and physical presence requirement periods. The employment letter submitted by the applicant on appeal 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)(i). Specifically, the letter is not notarized, it does not provide the exact period of employment, it does not provide the address where the applicant resided during the period of his employment, and it fails to describe the applicant's duties with the company. All other evidence submitted fails to document the applicant's continuous physical presence or continuous residency in the United States from February 13, 2001 to March 28, 2001. The applicant has, thereby, 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 TPS will be affirmed.

An alien applying for TPS 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.