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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUN 20 2005

[EAC 02 032 54567]

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 for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, 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 determined that 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. The director, therefore, denied the application.

On appeal, the applicant asserts that he failed to provide some evidence in support of his application. The applicant submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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).

The record shows that the applicant filed his TPS application on September 28, 2001. On February 20, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant failed to reply, and on April 18, 2003, the director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence. On May 20, 2003, the applicant requested that his case be reopened. On July 22, 2003, the case was reopened and, the applicant was again provided the opportunity to submit evidence establishing his continuous residence and continuous physical presence. The applicant again failed to respond to the notice. Therefore, the director again denied the application.

On appeal, the applicant again requests that his case be reopened. According to the applicant he has been present in the United States since before February 13, 2001 and, since March 9, 2001, he has lived in the United States without interruption. The applicant submits:

1. Copies of Global Express Money Order receipts dated April 1, 2003.
2. A copy of a document from [REDACTED] in Spanish, with no English translation, dated August 20, 2003, as well as account statements from [REDACTED] Finance,

Madison, Wisconsin, also in Spanish, with no English translations, with payment dates of November 4, 2003, December 5, 2003, January 4, 2004, and March 6, 2004.

3. A copy of a store receipt dated May 21, 2002, a receipt from [REDACTED] Alexandria, Virginia, dated May 20, 2003, and a hand-written generic receipt from [REDACTED] Falls Church, Virginia, dated September 17, 2001.
4. Copies of cancelled checks from [REDACTED] Arlington, Virginia, to the applicant, dated July 24, 2001, August 8, 2001, August 10, 2001, November 12, 2002, November 17, 2002, November 25, 2002, and February 18, 2003.
5. Copies of hand-written generic receipts dated June 23, 2003, July 21, 2003, and August 22, 2003.

One of the checks from [REDACTED] indicates a date of July 24, 2001, and is the earliest date presented, on appeal, as evidence of the applicant's presence in the United States. This is subsequent to the dates required to establish entry, continuous residence and continuous physical presence during the qualifying period. Therefore, this evidence is of little or no probative value.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.