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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:

[EAC 02 245 52719]

Office: VERMONT SERVICE CENTER

Date: JUN 24 2005

IN RE:

Applicant:

APPLICATION:

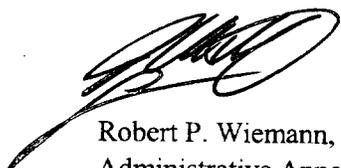
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 (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 that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a brief statement and additional documentation.

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 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 § 244.3;
- (e) Is not ineligible under § 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.

(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. Subsequent extensions of the TPS designation have been granted, the latest extension valid until September 9, 2005, upon the applicant's re-registration during the requisite time period.

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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on July 17, 2002. In support of the application, the applicant submitted:

1. A photocopy of the identification page from his El Salvadoran passport, issued in Washinton, D.C., on March 12, 2002; and,
2. A photocopy of an affidavit dated June 7, 2002, from [REDACTED] stating that the applicant had worked for [REDACTED] Construction, Alexandria, Virginia, since November 5, 2000.

On March 28, 2003, the director requested the applicant to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant had failed to respond to the request, therefore, the director denied the application due to abandonment on June 5, 2003. However, the record reflects that the applicant had, on April 24, 2003, responded to the director's request by submitting:

3. A letter, dated April 14, 2003, from [REDACTED] pastor of [REDACTED], Dale City, Virginia, stating that the applicant had been a parishioner at the church since 2001.

On June 18, 2003, the applicant submitted a motion to reopen the denial of his application. The director reopened the applicant's case on July 30, 2003. The director determined that the applicant had failed to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on these grounds on August 21, 2003.

The applicant has now filed an appeal of the director's August 21, 2003 decision. On appeal, the applicant submits the following additional documentation:

4. An affidavit, dated September 2, 2003, stating that he came to the United States in December 2000 and has been working in different places on a cash basis;
5. An affidavit, dated August 3, 2003, from [REDACTED] Woodbridge, Virginia, stating that the applicant was her room-mate from December 2000 to January 2002; and,
6. Photocopies of receipts issued to the applicant by [REDACTED] Arlington, Virginia, dated December 20, 2000, and January 10, 2001.

The applicant claims to have entered the United States in October 2000. It is reasonable to expect that he would have a variety of objective, contemporaneous evidence to support his claim of having continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001, through the date of filing his TPS application on September 17, 2001. Affidavits from an acquaintance (No. 5, above) and the applicant himself (No. 4) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The documents contained in No. 6 are dated prior to the required dates. The employment letter from [REDACTED] (No. 2) 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, it does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties with the company. Similarly, the affidavit from [REDACTED] (No. 3) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was registered as a parishioner at his church.

It is concluded that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, through to the date of filing his Form I-821 on September 17, 2001. He 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 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.