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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

JUL 29 2000

[WAC 03 268 51944]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 had failed to establish that he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits a statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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 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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate 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. A subsequent extension of the TPS designation has been granted by 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 shows that the applicant filed his initial application on September 16, 2003.

The director maintained that Citizenship and Immigration Services (CIS) records show that the applicant entered the United States from El Salvador on October 2, 2001, through the Miami International Airport on Iberia Airlines, Flight [REDACTED] as a TWOV (Transit Without Visa) passenger enroute to Madrid, Spain. The director, therefore, concluded that the applicant had failed to establish continuous residence in accordance with federal regulations and denied the application on April 16, 2004.

On appeal, the applicant, through his parent, asserts that he qualifies for TPS because he was in removal proceedings; therefore, he is eligible for late initial registration.

The record shows that the applicant entered the United States on October 2, 2001. Pursuant to 8 C.F.R. § 244.1, the applicant must establish continuous residence in the United States since February 12, 2001, and continuous physical presence since March 9, 2001. The applicant was not present in the United States during this period. Therefore, he could not have met the criteria described in 8 C.F.R. 244.2(b) and (c). Accordingly, the director's decision to deny the application for TPS will be affirmed.

Furthermore, despite the applicant's assertion, he has not established that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2).

The record shows that on October 15, 2001, in Miami, Florida, the applicant was paroled into the United States, pursuant to section 212(d)(5) of the Act, until October 30, 2002, pending removal proceedings. During removal proceedings hearing, conducted on December 13, 2001, the Immigration Judge granted the applicant voluntary departure until April 12, 2002, with an alternate order of removal to El Salvador. The applicant failed to depart as required. He also failed to appear at the Las Vegas, Nevada, district office on May 22, 2002, for his enforced departure.

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.