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U.S. Citizenship
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Date: NOV 03 2005

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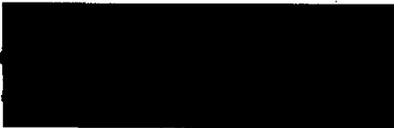
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 his qualifying continuous residence in the United States during the requisite time period.

On appeal, counsel for 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.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. Extensions of the TPS designation have been granted, 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 meets the above requirements. Applicants must 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 application filed his initial Form I-821, Application for Temporary Protected Status, on May 29, 2001. In support of the application, the applicant submitted evidence of his identity and nationality.

On August 18, 2003, and again on January 10, 2004, the director requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was informed that such evidence may include, but was not limited to, employment records, utility bills, receipts showing dates of service, school records, hospital or medical records, money order receipts, birth certificates of children born in the United States, dated bank records, rent records, or similar documents. In response, the applicant submitted letters from acquaintances attesting to his residence and physical presence in the United States. He also submitted:

1. A letter, dated September 5, 2003, from [REDACTED] Northport, New York, stating that he had been employed since December 2001;
2. Photocopies of earnings statements, issued in 2002 (excluding March, April and May);
3. Photocopies of generic rent receipts, dated March through June 2001;
4. A photocopy of an international money transfer receipt, dated August 22, 2002;

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence in the United States and denied the application on May 10, 2004.

On appeal, counsel for the applicant points out the hardship and extreme difficulties that undocumented persons have to prove their physical presence in the United States. In support of the appeal, counsel submits additional letters from acquaintances, as well as photocopies of the applicant's 2001, 2002, and 2003 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements.

The applicant claims to have lived in the United States continuously from August 23, 1999, to the date of filing his TPS application on May 29, 2001. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. Letters from acquaintances are not, by themselves, persuasive evidence of continuous residence and continuous physical presence.

There are discrepancies encountered in the evidence presented pertaining to the applicant's use of a Social Security number. On his initial Form I-821, the applicant indicated that he had never used a Social Security number. However, the documentation submitted on appeal indicates that he used Social Security number [REDACTED] from 2001 through 2003; while the documentation contained in No. 2 indicates that he used Social Security number [REDACTED] throughout 2002. These discrepancies have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence requirements described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has also failed to submit sufficient documentation to establish his qualifying continuous physical presence in the United States since March 9, 2001. Therefore, the application must also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.