



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER
[Consolidated with [Redacted]
[EAC 02 081 51624]

Date: NOV 17 2005

IN RE: Applicant: [Redacted]

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 "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 initially denied the application on June 10, 2003, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On July 21, 2003, the applicant filed an appeal. On appeal, the applicant stated that he and his brother, [REDACTED] CIS registration number [REDACTED] have the same name [REDACTED], and his brother responded to the Notice of Intent to Deny dated March 31, 2003, which related to the instant application [REDACTED] submitting a letter from his employer. The appeal was administratively terminated on February 28, 2004.

The director subsequently reopened the matter and denied the application again on July 27, 2004, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits a statement and additional evidence.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed his Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on January 7, 2002.

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 reveals that the applicant was apprehended by the United States Border Patrol on May 6, 2001, after having entered the United States without inspection near Hidalgo, Texas. The applicant was placed in removal proceedings. On February 28, 2002, the Immigration Judge in Arlington, Virginia, ordered the applicant removed to El Salvador in absentia.

The applicant claimed on his Form I-821 that he first entered the United States on July 15, 2000. In support of the application he submitted the following:

1. a photocopy of an untranslated letter in the Spanish language.

On April 19, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director noted that CIS records reflect that the applicant was apprehended by the United States Border Patrol near Hidalgo, Texas, on May 7, 2001, after having entered the United States without inspection. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on July 27, 2004.

On appeal, the applicant states that he never received the Notice of Intent to Deny dated April 19, 2004. He further states that the residents in his apartment complex have been having trouble with mail being put in the wrong mailbox and even being found in the trash can next to the mailbox. He submits the following:

2. an affidavit dated August 24, 2004, from [REDACTED] stating that the applicant has been his tenant since August 2000; and,

3. a photocopy of a monthly rental agreement between [REDACTED] and the applicant beginning on August 1, 2000, for a rental unit located at [REDACTED] MD 21401.”

The untranslated letter in the Spanish language will not be accepted as evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Furthermore, there is a discrepancy in the applicant's date of entry into the United States. The record confirms that the applicant was apprehended by the United States Border Patrol near Hidalgo, Texas, on May 6, 2001. The applicant told the apprehending officers at that time that he left El Salvador on or about April 6, 2001, traveling north by bus through Guatemala and Mexico. The applicant made no claim at the time of his apprehension that he was re-entering the United States to resume residence in the United States. However, the applicant claimed on his TPS application that he first entered the United States on July 15, 2000. He has submitted a purported rental agreement for an apartment beginning on August 1, 2000, and a letter from Mr. [REDACTED] stating that the applicant has purportedly been his tenant since “August of 2000.” The applicant has not provided any explanation as to how he could have leased an apartment in Annapolis, Maryland, in August of 2000, when he did not enter the United States until May 6, 2001.

Doubt cast on any aspect of the applicant's proof 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 applicant to resolve any inconsistencies in the record by independent objective evidence, and 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).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has not submitted sufficient credible evidence to establish that he satisfies the residence and physical presence requirements 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.

Beyond the decision of the director, the applicant has not submitted an official Salvadoran national photo identification document to establish his identity and nationality. Therefore, the application also must be denied for this reason.

It is noted that the record contains an outstanding order of removal dated February 28, 2002.

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.



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ORDER: The appeal is dismissed.