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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 18 2005

[WAC 03 058 54559]

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 "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now on appeal before the Administrative Appeals Office (AAO). 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, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 El Salvadorans was from March 9, 2001, through September 9, 2002. 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, with the latest extension valid 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 applicant submitted his initial Form I-821, Application for Temporary Protected Status, to the California Service Center on September 13, 2002, four days after the initial registration period had ended.¹

¹ The applicant signed his initial Form I-821, and accompanying Form I-765, Application for Employment Authorization, on September 7, 2002. However, the applications were not mailed to the California Service Center until September 9, 2002, where they were received on September 13, 2002. On November 15, 2002, the California Service Center returned the applications to the applicant with a request that he resubmit the applications with a check for \$120.00 to cover the cost of the Form I-765. The Form I-821 and Form I-765 were then returned to the California Service Center on November 25, 2002.

On June 27, 2003, the director of the California Service Center requested the applicant to submit evidence to establish his nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted a letter, dated August 5, 2003, from Giant Express International Courier, Los Angeles, California, stating that the applicant had been a client from November 2000 to February 2002. The return address on the envelope containing the letter from Giant Express indicated that the applicant had moved to Hyattsville, Maryland.

On March 4, 2004, the director of the Vermont Service Center also requested the applicant to submit evidence to establish his nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted photocopies of the identification page from his El Salvadoran birth certificate, with English translation, and the identification page from his El Salvadoran passport. He also submitted a letter from his uncle stating that the applicant had entered the United States in December 1999, and a letter from an acquaintance stating that he had known the applicant since December 28, 1999.

The director determined that the applicant had not established his qualifying continuous residence in the United States during the requisite time period and denied the application on July 8, 2004.

On appeal, the applicant submits documentation indicating that he last entered the United States as a non-immigrant visitor on October 28, 2000 and a letter from [REDACTED] in Los Angeles, California, stating that he had been a client since February 5, 2001.

The applicant claims to have lived continuously in the United States from October 28, 2000 to the date of filing his TPS application on September 13, 2002. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. Affidavits and letters are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence.

Based on a review of the record, it is concluded that the applicant has not submitted sufficient evidence, as described in 8 C.F.R. § 244.9(a)(2), to establish that he satisfies the continuous residence requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his qualifying continuous physical presence in the United States since March 9, 2001. He has also failed to submit any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Therefore, the application must also be denied for these reasons.

The petition 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.