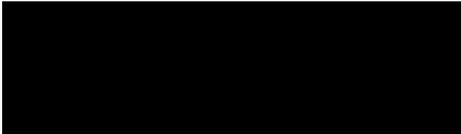




U.S. Citizenship
and Immigration
Services

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MI

FILE: [REDACTED]
[SRC 02 046 57935]

Office: VERMONT SERVICE CENTER

Date: NOV 23 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.

Cindy M. Gomez
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 stated 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 denied the application because the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite periods. The director also found that the applicant failed to establish that he is a citizen or national of El Salvador.

On appeal, the applicant provides a brief statement, additional documentation, and previously submitted documents.

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 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 section 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.
- (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 first issue raised by the director to be addressed in this proceeding is whether the applicant has established that he is a citizen or national of El Salvador.

An applicant is eligible for temporary protected status only if such alien establishes that he or she is a national of a foreign state designated under section 244(b) of the Act. 8 C.F.R. § 244.2(a).

The applicant claims on the application that he is a citizen of El Salvador. In a notice of intent to deny, dated April 8, 2004, the Service requested that the applicant submit evidence to establish that he is a citizen or national of El Salvador. The applicant failed to respond to the notice of intent to deny.

The director found that the applicant failed to establish that he is a citizen or national of El Salvador. The director denied the application on July 22, 2004.

8 C.F.R. § 244.9(a) states, in pertinent part:

(1) *Evidence of identity and nationality.*

Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and /or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On appeal, the applicant submits another copy of an El Salvadoran birth certificate along with the English translation, which indicates that the applicant was born on December 28, 1979 in San Bartolome Perulapia, Cuscatlan, EL Salvador. However, the applicant did not provide any evidence as required in 8 C.F.R. § 244.9 (a). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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 have been granted by the Secretary of the Department of Homeland Security, 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 or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by 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 or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

In the above-mentioned notice of intent to deny, dated April 8, 2004, the applicant was also requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes. As previously mentioned, the applicant failed to respond to the notice of intent to deny.

The director found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes and denied the application on July 22, 2004.

On appeal, the applicant states that: he has never abandoned his "TPS benefit;" he was fingerprinted in our office; and, he renewed "punctually my Employment Authorization Card." The applicant submits a copy of his employment authorization card; three copies of generic rent receipts for April 2001, May 2001, and August 2001; copies of two generic rent receipts with only the year (2001) portion copied; a copy of a generic rent receipt with a portion of the date showing "2001 to 3-2001;" a copy of a generic rent receipt with no date; a copy of a "gigante express" receipt, dated March 11, 2001; a copy of one earnings statement, dated October 19, 2001; a copy of Form SSA-5029, Receipt for Application for a Social Security, dated December 17, 2001; a copy of a ticket, containing the applicant's name, from Greyhound Lines, Inc., dated November 27, 2001; and copy of a letter from [REDACTED] which was previously submitted.

The documentation presented on appeal is not sufficient to demonstrate the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The record contains insufficient evidence to demonstrate that the applicant has continuously resided in the United States since February 13, 2001, and that he has been continuously physically present in the United States since March 9, 2001. The applicant has failed to provide sufficient evidence 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 TPS on these grounds will be affirmed.

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.