



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: NOV 30 2005
[EAC 02 260 51402]

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.

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 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, and had been continuously physically present from March 9, 2001, to the date of filing the application.

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 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 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 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 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).

The record shows that the applicant filed his TPS application on August 8, 2002. In support of his application, the applicant submitted:

1. A letter of employment dated July 2, 2002, from [REDACTED] Human Resource Assistant for New England Confectionery Company (NECCO), indicating that the applicant has worked as a machine operator with the company from October 5, 2001, to the present.
2. A statement dated February 4, 2002, from [REDACTED] Pastor, Most Holy Redeemer Parish, East Boston, Massachusetts, indicating that the applicant is a member of the parish, he currently resides at [REDACTED] he has been a member of the congregation for two years, and he attends Mass in that parish.

In a notice of intent to deny dated June 30, 2003, and February 10, 2004, the applicant was requested to submit additional evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant submitted:

3. Two additional statements from [REDACTED] (No. 1 above), one indicating that the applicant is a friend of his, and the other adding that the applicant's position with NECCO is full-time and of a permanent nature, he works forty hours a week, and his rate is \$9.75 per hour.
4. A note from [REDACTED] indicating that the applicant lived at [REDACTED] from February 2000 to September 2001.

The director determined that in response, the applicant failed to provide documentary evidence to support the letters, and that the letters are not sufficient to cover the time period required under the TPS program. The director, therefore, denied the application on April 20, 2004.

On appeal, the applicant asserts that he has been in the United States since before, and after, February 13, 2001. He submits:

5. A statement dated May 3, 2004, from [REDACTED] stating that she resides at [REDACTED] for approximately 5 years, and that the applicant resided with her at this address from February 2000 until September 2001.
6. A statement dated May 18, 2004, from [REDACTED] indicating that he is a friend of the applicant since November 28, 2000 when he was residing at [REDACTED] and now residing [REDACTED] and that the applicant has been continuously residing, without any interruption, in the Massachusetts area.

The statement from Fr. Hennessey (No. 2 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically the pastor does not explain the origin of the information to which he attests, and how he knows the applicant. While he indicated that the applicant is a member of the parish and of the congregation for two years, he failed to indicate the dates he has resided in his parish, and whether he is a registered member of that parish. Further, while he indicated on his statement dated February 4, 2002, that the applicant currently resides at [REDACTED] it is noted that Mr. [REDACTED] (No. 4 above) and Ms. [REDACTED] (No. 5 above) both stated that the applicant resided at that address from February 2000 to September 2001. Additionally, Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] (No. 6 above) fail to provide any specifics regarding the nature, circumstances, or origin of their acquaintanceship with the applicant.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying continuous residence and continuous physical presence in the United States were not supported by any other corroborative evidence.

The remaining evidence (Nos. 1 and 3 above) establishes the applicant's continuous residence and continuous physical presence only since October 5, 2001, to the date of filing the application. The applicant claimed to have lived in the United States since January 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application 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.