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U.S. Citizenship
and Immigration
Services



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FILE:



[EAC 01 205 51613]

Office: VERMONT SERVICE CENTER

Date: **OCT 03 2005**

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and she again denied the application. The applicant appealed the director's decision on the motion, and it 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 on November 6, 2002, after determining that the applicant had abandoned his application by failing to respond to a request for evidence to establish continuous residence in the United States by February 13, 2001.

On motion, the applicant states that he never received anything in the mail instructing him to submit additional evidence.

The director determined that the applicant had not overcome the grounds of denial and denied the application again on May 14, 2003.

On appeal, the applicant asserts that he has submitted enough evidence that he entered the United States prior to February 13, 2001. The applicant submits evidence, and resubmits evidence previously provided, in an attempt to establish continuous residence during the qualifying period. The applicant also requests an additional 15 days to submit a brief and/or 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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension 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 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 May 30, 2001. On June 3, 2002, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001. The applicant was also requested to submit a photo identity document. The applicant failed to respond to the notice. Therefore, the director denied the application as abandoned.

On motion, the applicant states that he never received anything requesting additional evidence. According to the applicant, he submitted a change of address request but there was an apparent delay in updating his records.

The director determined the applicant failed to overcome the basis for the denial and denied the application again on May 14, 2003.

On appeal, the applicant submits additional evidence, and resubmits evidence previously provided in an attempt to establish continuous residence in the United State since February 13, 2001. The applicant also requests an additional 15 days to submit a brief and/or evidence. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

The applicant submitted the following documentation:

1. A copy of his State of Virginia identification card issued on June 22, 1998.
2. A copy of his passport issued in Washington, D.C. on June 3, 1997.
3. Copies of 2001, 2002 and 2003 Internal Revenue Service (IRS) Form W-2, wage and Tax Statements, IRS Form 1040 EZ, Income Tax Return for Single and Joint Filers with no Dependents, and, State of Maryland Form 502, Maryland Tax Returns.

The identification card and passport indicate the applicant was present in the United States prior to the requisite date to establish continuous residence. The 2001 tax statements indicate the applicant was present in the United States in 2001. However, these documents do not establish the applicant's continuous residence since February 13, 2001. The remaining tax documents indicate the applicant was present in the United States in 2002 and 2003, but cannot establish the applicant's continuous residence for the requisite period.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence 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, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. Therefore, the application must be denied for these reasons as well.

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.