



U.S. Citizenship
and Immigration
Services

MI

FILE:

[REDACTED]

Office: Vermont Service Center

Date: OCT 28 2005

[EAC 04 016 52352]

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 failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods, and to establish his eligibility for TPS late registration. The director also stated that the applicant failed to provide documentation regarding his nationality. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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).

On March 10, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant was also requested to submit evidence that he is a national or citizen of El Salvador. The director determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome. The director, therefore, denied the application on August 5, 2004.

On appeal, that applicant stated that he had responded to the director's March 10, 2004 request. The applicant also states that his mother [REDACTED] is currently an eligible TPS registrant and his step-father, [REDACTED] has an NACARA application pending with the Service. In addition, the applicant states, on appeal, that he did not enter the United States until July 29, 2001. The applicant also provides the following documentation along with his appeal: copies of his Social Security and Employment Authorization cards; a copy of a letter to the Service dated April 19, 2004, regarding his response to the director's March 10, 2004 request; and copies of two letters to the Service dated August 20, 2003 and September 25, 2003, regarding his application for TPS.

A review of the record of proceedings reflects that the director erred in stating that the applicant did not respond to the director's March 10, 2004 request. The record contains a response from the applicant on April 21, 2004, and the applicant submitted evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods for El Salvadoran TPS. Further, the record contains copies of the applicant's passport which establishes he is a citizen of El Salvador.

A review of the record of proceedings also reflects that the applicant stated on the Form I-821, Application for Temporary Protected Status, that he did not enter the United States until July 29, 2001, at New York City, as a non-immigrant visitor. The record also contains a copy of the applicant's Form I-94, Departure Card, indicating that he was admitted in to the United States on July 29, 2001, at New York City, as a non-immigrant visitor. In addition, the record contains copies of the applicant's El Salvadoran passport reflecting that the applicant was issued a non-immigrant visa to the United States on March 28, 2001, in San Salvador, El Salvador, for the purpose of visiting the United States. Therefore, the applicant could not have met the requirements that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. The applicant has, thereby, failed 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 temporary protected status 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 TPS 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.