



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MI

FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 04 2005

[EAC 03 044 52632]

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, reopened, and denied again 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 initially denied the application on February 27, 2003, after determining that the applicant had abandoned his application by failing to respond to a request for evidence dated January 13, 2003. The applicant was informed that there is no appeal from a denial due to abandonment, but he could file a motion to reopen and reconsider within 30 days of the issuance date of the denial decision.

On March 21, 2003, the applicant filed a motion to reopen and reconsider. On motion, the applicant stated that he responded to the Notice of Intent to Deny on February 3, 2003. He submitted a domestic return receipt indicating that mail was received at the Vermont Service Center on February 6, 2003.

The director reopened the matter on August 20, 2003. On April 16, 2004, the director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States and denied the application.

On appeal, the applicant submits additional 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 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 § 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.

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 has been granted, 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On August 20, 2003, the applicant was requested to submit evidence establishing his eligibility for late initial registration and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, provided an affidavit dated August 27, 2003, from [REDACTED] stating that the applicant has rented the basement of her home located at 409 Trinbrook Parkway, Rockville, Maryland, since December 2000, along with two letters from the Social Security Administration dated August 17, 2002, and August 16, 2003, respectively.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on April 16, 2004.

On appeal, the applicant submits a letter dated April 23, 2004, from the Greater Washington Orthopaedic Group in Silver Spring, Maryland, stating that the applicant was seen in their office for a medical evaluation during December 2000, and a letter dated May 7, 2004, from [REDACTED] Pastor of [REDACTED] in Rockville, Maryland, stating that the applicant has been "a faithful member and tithe giver" in his church since December 2000.

The letter from the Greater Washington Orthopaedic Group predates the requisite periods to establish continuous residence and continuous physical presence in the United States, and the letters from the Social Security Administration are dated after the requisite periods. The letter from Pastor [REDACTED] 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, nor does he provide the address where the applicant resided during the period of his involvement with the church.

The affidavit from Ms. [REDACTED] is not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant claims to have lived in the United States since November 2000. It is reasonable to expect that he would have some type of contemporaneous documents to corroborate this affidavit; however, no such evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable

evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements 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.

Beyond the decision of the director, it is noted that the initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The applicant did not properly file his TPS application with the correct fees until September 18, 2002. The applicant has not provided any evidence to establish his eligibility for late initial registration as described at 8 C.F.R. 244.2(f)(2). Therefore, the application also must be denied for this reason.

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.