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**U.S. Citizenship
and Immigration
Services**

MI

FILE:



Office: VERMONT SERVICE CENTER

Date: **OCT 04 2005**

[EAC 03 068 52411]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

for 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 claims 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 that he had been continuously residing in the United States since February 13, 2001.

On appeal, the applicant provides copies of previously submitted documentation, a copy of his spouse's employment authorization card, and some additional documentation.

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 issue raised by the director to be addressed in this proceeding is whether the applicant has been continuously residing in the United States since February 13, 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.

In a notice of intent to deny, dated March 3, 2004, the applicant was requested to submit evidence of his continuous physical presence in the United States since March 9, 2001, and his continuous residence in the United States since February 13, 2001.

The director found that the applicant, in response to the notice of intent to deny, failed to establish his continuous residence during the requisite timeframe. The director denied the application on March 12, 2004. It is noted that the director's decision states that the basis for the notice of intent to deny was that the applicant "failed to establish that you have continuously resided in the United States since February 13, 2001, and you

failed to establish that you have been continuously physical present in the United States from March 9, 2001, to the date of filing your application." The director's decision did not comment on the issue of continuous physical presence, therefore, this issue will be addressed beyond the decision of the director.

On appeal, the applicant provides additional documentation, which consists of a letter from [REDACTED] who states that the applicant "WAS RENTING IN MY HOUSE SINCE OCTOBER 1999 TO JUNE 2001;" page 2 of what appears to be a bank statement for activity in March 2004; an affidavit from Hector Cruz who states that he has known the applicant since "June 2000 to the present time," and that he was the applicant's manager since "June 2000 until December 2000;" and, copies of two receipts from "Travelers Express Company, Inc. Drawer," both dated September 22, 2001, but contain no name.

The applicant has provided no additional documentation on appeal that would sufficiently demonstrate his continuous residence in the United States during the requisite timeframe. The receipts from [REDACTED] Drawer do not identify the applicant, and were dated approximately seven months after the onset of the qualifying timeframe. The bank statement was dated March 2004, which is almost three years after the onset of the qualifying timeframe. The letter from [REDACTED] and the affidavit from [REDACTED] are not accompanied by any documentary evidence, such as credible rent receipts in Mr. [REDACTED] case and employment records in the case of Mr. [REDACTED] to substantiate their claims. None of the documentation submitted is sufficient in demonstrating the applicant's day-to-day living in the United States from the onset of the qualifying timeframe to the filing date of his TPS application. The documentation presented on appeal is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the director's decision to deny the application for temporary protected status for this reason will be affirmed.

Beyond the decision of the director, for the reasons stated above, the documentation contained in the record is not sufficient to establish that the applicant has been continuously physical present in the United States since March 9, 2001, to the time of the filing of his TPS application on October 5, 2002. In addition, the applicant failed to provide identification. Therefore, the application must also be denied for these reasons.

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.