



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 02 283 33023]

Office: VERMONT SERVICE CENTER

Date: OCT 05 2005

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 establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. An extension of the TPS designation has been granted 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).

Initially, the applicant submitted the following documentation along with his TPS application:

1. An affidavit from [REDACTED] in which he stated that he has known the applicant since January 30, 2001 and that he has continuously resided in the United States since that time; and,
2. An affidavit from [REDACTED] in which she stated that she has known the applicant since February 3, 2001 and that he has continuously resided in the United States since that time.

On March 3, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The record of proceeding does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 12, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

3. A copy of an invoice from [REDACTED] dated March 25, 2004 and addressed to the Vermont Service Center from the applicant;
4. A copy of a receipt from Mail Boxes Etc. dated March 25, 2004;
5. A copy of a letter from [REDACTED] Church in which he states that a parish leader has stated to him that the applicant has been living in the United States since December of 2000;
6. A copy of a post marked letter addressed to the applicant in [REDACTED], New York and dated December 12, 2000;
7. A letter from the president of Intercom Travel Services, Inc. in which he states that the applicant has been utilizing his money transmitter services since around January of 2001; and,
8. A letter of employment from [REDACTED] in which he states that he has known the applicant since January of 2001 and that the applicant has done some gardening for him and has helped him around the house.

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The statements made by [REDACTED] and [REDACTED] (Nos. 1 and 2 above) regarding the applicant's claimed presence in the United States since December of 2000 are not supported by any corroborative evidence. The applicant claims to have been in the United States since December of 2000. It is reasonable to expect that he would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence and continuous physical presence in the United States during the requisite period. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's residence in the United States. Affidavits, without supporting evidence, are not, by themselves, persuasive evidence of continuous residence and continuous physical presence.

The affidavit from [REDACTED] (No. 5 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, nor does he provide the address where the applicant resided during the period of his alleged involvement with the church.

The employment letter from [REDACTED] (No. 8 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)(i). Specifically, it is not in affidavit form, does not state the specific dates of the applicant's employment, and it does not provide the address where the applicant resided during the period of his employment. It is further noted that there has been no corroborating documentation submitted to substantiate [REDACTED] claim. The letter from the president of Intercom Travel Services (No. 7 above) is too vague to establish the applicant's presence in the United States during the requisite time period. All other evidence is dated prior to the requisite time period.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.