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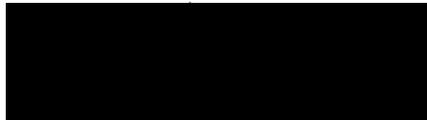
MI

FILE: [REDACTED]
[EAC 02 278 50931]

Office: VERMONT SERVICE CENTER

Date: OCT 18 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, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and 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. Subsequent extensions of the TPS designation have been granted, with the latest 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).

The applicant initially submitted a photocopy of an earnings statement from [REDACTED], Inc., in Falls Church, Virginia, for the pay period ending December 24, 2000.

On July 1, 2003, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided photocopies of three earnings statements from [REDACTED], Inc., for the pay periods ending January 7, 2001, February 11, 2001, and March 4, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 15, 2003.

On appeal, the applicant states that he doesn't have much evidence to submit to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. He submits a photocopy of his 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from [REDACTED], Inc.; a photocopy of his 2001 Form 502, Maryland Tax Return; and, an affidavit dated September 18, 2003, from [REDACTED] stating that the applicant has been renting a room in her apartment since March 2000.

The applicant has submitted earnings statements indicating his residence and physical presence in the United States from December 2000 to March 2001. The applicant's IRS Form W-2 is not sufficient to establish the applicant's continuous residence and continuous physical presence because there is no indication as to the actual dates the applicant worked for [REDACTED], Inc., during the year 2001. The applicant has provided only the letter from Ms. [REDACTED] to establish his qualifying continuous residence and continuous physical presence since March 2001.

The applicant claims to have lived in the United States since February 2, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the letter from Ms. [REDACTED] to establish his residence and physical presence since March 2001; however, no such evidence has been provided. 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.

It is noted that the applicant was apprehended by the United States Border Patrol on November 20, 1999, near Eagle Pass, Texas. He was on a bus en route to San Antonio, Texas. The applicant initially told the apprehending officers that his name was [REDACTED] but an inventory of his personal possessions revealed his Salvadoran national identity document (cedula) indicating that his true name is [REDACTED]

The applicant was subsequently released on his own recognizance and issued a notice ordering to appear before an Immigration Judge in San Antonio, Texas, for a removal hearing at a date and time to be determined. There is no indication in the record that a removal hearing was ever held.

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.