

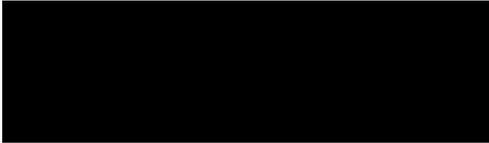
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



MI

FILE:



[EAC 04 059 52540]

Office: VERMONT SERVICE CENTER

Date: OCT 31 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

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 been continuously residing in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to establish that he was eligible for late registration.

On appeal, the applicant makes a brief statement and submits 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 first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 have been granted, with the latest extension valid until September 9, 2006, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed his application on December 17, 2003.¹

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 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 own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed his application for TPS on December 17, 2003, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

In a notice of intent to deny, dated March 31, 2004, the applicant was requested to submit evidence of his eligibility for late registration. The applicant was also requested to submit evidence to establish his continuous

¹ It is noted that the applicant was 8 years old at the time that the initial application was filed.

residence and his continuous physical presence in the United States during the requisite timeframes. The applicant failed to respond to the notice of intent to deny.

The director found that the applicant failed to establish his eligibility for late registration, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director denied the application on July 15, 2004.

On appeal, the applicant states that he never received any letters from the Service requesting evidence. The applicant submits: a copy of the director's denial with "child of an alien currently eligible to be a TPS registrant" underlined; a copy of the denial of his employment authorization denial; a letter from [REDACTED] dated July 21, 2004, stating that the children [REDACTED] and [REDACTED] of [REDACTED] have been his tenants "since they arrived in this country on February 12, 2001 to February 2003 at [REDACTED] two generic rent receipts, one for February 1, 2001, and one for October 3, 2003; and a letter from [REDACTED] dated July 30, 2004, who states that her son did not file for TPS the first time because:

The person who filled [sic] the first time for my application and my husband's for TPS, Mr. [REDACTED] never advise [sic] us that my children were able to filed [sic] for TPS. Mr. [REDACTED] in [REDACTED] MA said to us that it wasn't necessarily that my children can filled [sic] that time and Mr. [REDACTED] in Chelsea, MA never ask me if my children were living with me at the time.

Although it is indicated on appeal that the applicant is a "child of an alien currently eligible to be a TPS registrant, no documentary evidence has been submitted to substantiate this assertion. No documentary evidence has been presented on appeal to establish that the applicant has met the requirements for late registration as described in 8 C.F.R. § 244.2(f)(2) and 8 C.F.R. § 244.2(g). Consequently, the director's decision to deny the TPS application for this reason will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 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.

As previously stated in the above-mentioned notice of intent to deny, the applicant was requested to submit evidence of his continuous residence and his continuous physical presence in the United States during the required timeframes. The director, in his decision dated July 15, 2004, found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite periods and, therefore, denied the application.

On appeal, the applicant has not provided sufficient documentary evidence to show that he has been continuously residing and has been continuously physically present in the United States during the requisite timeframes. The above-mentioned letters and rent receipts are not sufficient for meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The documentation presented does not sufficiently establish the applicant's day-to-day living in the United States from the onset of the qualifying timeframes to the filing date of his TPS application on December 17, 2003. Consequently, the director's decision to deny the application for temporary protected status for these reasons 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 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.