



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
[EAC 01 199 52326]

Date: OCT 31 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. A motion to reopen, filed by the applicant, was granted by the director and She again denied the application. The applicant appealed the director's decision on the motion, and it 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence to establish 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 motion, the applicant stated that he entered the United States in June 1997 and has not departed this country since then. The applicant also submitted additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The director determined that the applicant had failed to overcome the basis for the denial and denied the application again.

On appeal, the applicant again states that he entered the United States in June 1997. The applicant also submits evidence, and resubmits evidence previously provided, in an attempt to establish continuous residence and continuous physical presence during the requisite period.

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 as 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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite 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).

The record shows that the applicant filed his TPS application on May 18, 2001. On October 10, 2001, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant failed to respond to the notice and the director, therefore denied the application as abandoned. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen.

On motion, the applicant stated that he entered the United States in June 1997. The applicant provided a chronology of his application process and stated that he did not receive the intent to deny notice. The applicant also provided a copy of his daughter's birth certificate showing her birth on February 7, 1998, three photographs

of his wife, copies of his State of Massachusetts identification card. The applicant also resubmitted documents that had been a part of the record.

The director determined that applicant failed to overcome the basis for the denial and denied the application again.

On appeal, the applicant again states that he entered the United States and provided a chronology of his application process. According to the applicant, his daughter's birth certificate should be considered because his name appears on the document. The applicant also submitted a statement from [REDACTED] the [REDACTED]. The applicant also submits copies of 2000 and 2001 tax documents.

The birth certificate does not establish that the applicant was present in the United States. Similarly, the photos have hand-written dates on them, which does not establish the applicant's continuous presence in the United States and continuous physical presence in the United States during the qualifying period. The identification card does not have an issue date on it, and is, therefore, of no probative value.

[REDACTED] states that her company employed the applicant since February 12, 2000. According to [REDACTED] the applicant started the job under the name of [REDACTED] and changed his name to [REDACTED] in May or June of 2001. However, the statement 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, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties of employment. Moreover, neither the applicant nor [REDACTED] provides any evidence to establish that the applicant and [REDACTED] and the applicant are one and the same person. The tax documents indicate the applicant was present in the United States in 2000 and 2001, but cannot establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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 also noted that the applicant submitted a translated birth certificate that was issued in EL Salvador on April 4, 2001. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c).

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.