



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



M

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: AUG 21 2006

[EAC 03 259 52913]

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.

  
per Robert P. Wiemann, Chief  
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 determined that the applicant failed to submit sufficient evidence to establish that: (1) he had continuously resided in the United States since February 13, 2001; (2) he had been continuously physically present in the United States since March 9, 2001; and (3) he was eligible for late registration. The director, therefore, denied the application.

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 alien 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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on September 15, 2003.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceeding confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

In a Notice of Intent to Deny dated February 20, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. The applicant, in response, provided evidence in an attempt to establish his residence in the United States. The director determined that the applicant had failed to submit any evidence to establish that he was eligible for late initial registration and denied the application on September 14, 2004.

On appeal, the applicant neither addressed nor submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

In a Notice of Intent to Deny dated February 20, 2004, the applicant was requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. The applicant, in response, submitted copies of a bank statement dated March 10, 2000, a telephone bill dated March 22, 2002, and 13 pay statements. The director noted that the applicant's name was not included on the pay statements submitted for early 2001 and are not sufficient to cover the time period required for the TPS program. Therefore, the director denied the application on September 14, 2004.

On appeal, the applicant submitted additional copies of bank statements, telephone bills, and pay statements all containing the applicant's name and address.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, is sufficient to establish that the applicant has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has overcome these findings of the director.

However, the applicant remains ineligible for TPS because he has failed to establish that he was eligible for late initial registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application will be affirmed.

The record shows that a Notice to Appear, Form I-862, was issued on May 23, 2000, in Pittsburgh, Pennsylvania, based on the applicant's entry into the United States without inspection on or about October 1, 1999. In removal proceedings held on September 28, 2001, the applicant failed to appear; therefore, the Immigration Judge determined that the applicant had abandoned any and all claims for relief from removal and ordered the applicant removed to El Salvador *in absentia*.

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.