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DATE: AUG 14 2006

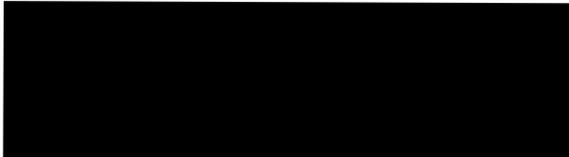
IN RE:

Applicant:



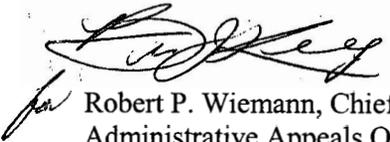
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for 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 denied the application because the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel 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.

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 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 April 9, 2001. In a notice of intent to deny dated March 19, 2003, the applicant was requested to submit evidence to show that he had continuously resided in the United States since February 13, 2001. The applicant failed to respond; therefore, the director denied the application on July 24, 2003. On September 27, 2003, the applicant filed an appeal from the denial decision. Because the appeal was filed later than the prescribed period of 33 days, on April 16, 2004, the director rejected the appeal and accepted the appeal as a motion to reopen. The director reviewed the evidence furnished by the applicant and noted that the four affidavits furnished on motion and the single affidavit submitted with the initial application were not accompanied by any other supporting documentation and are, therefore, of little evidentiary value. The director concluded that the grounds of denial had not been overcome and denied the application on April 16, 2004. On May 21, 2004, the applicant appealed the director's April 16, 2004 denial, and submitted the following:

1. A copy of a receipt for merchandise purchased on April 5, 2001. It is noted that this receipt is lacking the name of the company or store where the items were purchased. It also is noted that the handwriting of the name and address of the applicant on the receipt is different from the handwriting of the items purchased; therefore, this receipt cannot be accepted as credible evidence.
2. A copy of a doctor's prescription order form dated March 8 (the year is unclear). The name of the prescription medication was not listed on this form; rather, the name of a doctor, a telephone number, and an address was handwritten on the form. It also is noted that the handwriting of the name of the applicant is different from the handwriting on the rest of the form. This document also cannot be accepted as credible evidence.

3. A copy of a work status dated August 8, 2001, from [REDACTED] indicating that the applicant was "Not Capable of returning to work until 8/16/01." This document is dated subsequent to the date required to establish residence and physical presence during the requisite period (after the date of filing the TPS application on April 9, 2001).

On August 30, 2004, the director again denied the TPS application because the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. On appeal, counsel submits the following:

4. Copies of earnings statements from [REDACTED] for pay periods ending September 28, 2001; November 23, 2001; December 7, 2001; January 4, 2002; February 15, 2002; March 15, 2002; April 12, 2002; May 24, 2002; June 21, 2002; July 19, 2002; August 16, 2002; September 13, 2002; and October 11, 2002.
5. Copies of Forms 1040A, Income Tax Return, for the years 2001, 2002, 2003.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancy in the evidence he provided (detailed in Nos. 1 and 2 above). Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to submit credible, sufficient evidence to establish that he has continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 19, 2001, to the date of filing the application on April 9, 2001. The remaining evidence contained in the record (Nos. 3, 4, and 5 above) only establishes the applicant's continuous residence and continuous physical presence since August 2001, after the date the TPS application was filed. The applicant claimed to have lived in the United States since March 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.