



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 01 236 54781]

Office: VERMONT SERVICE CENTER

Date: DEC 13 2006

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:

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and 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 submit sufficient evidence to establish his eligibility for TPS.

A subsequent appeal from the director's decision was dismissed on March 3, 2005, after the Director of the AAO also concluded that the applicant had failed to establish continuous residence and continuous physical presence in the United States during the requisite time periods.

On motion to reopen, counsel states that the AAO failed to take into account evidence submitted by the applicant prior to denying the TPS application, and further asserts the applicant's claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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.

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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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 applicant submitted the following documentation in an effort to establish continuous residence and continuous physical presence in the United States:

1. An affidavit from [REDACTED] in which she states that she has known that the applicant has lived in the United States since November of 2000 because he was present before the Thanksgiving holiday and during birthdays celebrated in the month of November;

2. An affidavit from [REDACTED] which he states that the applicant is his father, that he has been in the United States since November of 2000, and that the applicant has lived and worked for him since his arrival in the United States;
3. A copy of a real estate agreement entered into by [REDACTED] in June of 2001;
4. A copy of an automobile purchase notice from Chrysler Financial bearing the name [REDACTED] as purchaser and dated December 19, 2000;
5. A copy of a receipt for legal services from [REDACTED] dated March 8, 2000 and bearing the name [REDACTED] as client;
6. A copy of a personal check from [REDACTED] to Catholic Charities dated March 8, 2000;
7. An affidavit from [REDACTED] in which he states that he met the applicant at a Christmas party in December of 2000 and knows that the applicant has been present in the United States since November of 2000 because the applicant's son told him so;
8. A copy of a money order receipt from Gigante Express dated April 15, 2001 and bearing the applicant's name as signor;
9. A copy of a pre-approval notice from [REDACTED] dated July 16, 2001 and bearing the applicant's name as customer; and
10. A copy of a receipt from [REDACTED] dated June 13, 2001 and bearing the applicant's name as customer.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States since February 13, 2001. The receipts and notice submitted by the applicant (see numbers 8 to 10 above) are dated subsequent to the operative dates; and therefore, cannot be used to establish the applicant's continuous residence and continuous physical presence in the United States. There has been no evidence submitted to corroborate the statements made by the affiants in numbers 1, 2, and 7 above. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. The evidence submitted by the applicant's son (see numbers 3 to 6 above) concerning the son's business activities in the country is insufficient to establish the applicant's presence in the United States during the requisite time periods.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the prior decisions to deny the application for TPS will be affirmed.

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.