



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
[EAC 01 202 50263]

Office: VERMONT SERVICE CENTER

Date: FEB 27 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: 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, reopened, and denied again 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 initially denied the application on July 30, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On November 6, 2004, the applicant filed an appeal from the denial decision. On appeal, the applicant explained that he failed to file his appeal within 33 days of the issuance date of the denial decision because he had moved to a new address and did not receive the denial notice until two days prior to the filing date of the appeal. He submitted additional evidence in support of the application.

On January 14, 2005, the director rejected the appeal as untimely filed but accepted it as a motion to reopen. The director affirmed his prior decision, finding that the applicant had not submitted sufficient evidence to overcome the grounds for denial of the application.

On February 9, 2005, the applicant filed the current appeal. 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 applicant who is a national of a foreign state 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 § 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.
- (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 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. 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 time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his/her initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 21, 2001.

The burden of proof is upon the applicant to establish that he 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 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 applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on December 18, 1996. In support of the application, the applicant submitted:

1. a photocopy of an Urgente Express money transfer receipt dated March 26, 2001; and,
2. photocopies of earnings statements from an unidentified company for the pay periods from: March 1, 1998 to March 7, 1998; October 25, 1998 to October 31, 1998; November 8, 1998 to November 14, 1998; and, December 27, 1998 to January 2, 1999.

On March 17, 2004, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on July 30, 2004.

On appeal, the applicant submitted the following:

3. a photocopy of his 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, and a photocopy of his IRS Form W-2, Wage and Tax Statement, from EDA Select Temporaries of Lynnfield, Massachusetts;
4. a photocopy of his 2002 IRS Form 1040EZ and his 2002 IRS Form W-2 from Unicco Service Company in Auburndale, Massachusetts;
5. a photocopy of an earnings statement from an unidentified company for the pay period ending October 24, 2004;
6. photocopies of earnings statements from Herrera's Burritos, Inc., for the pay periods from: September 1, 2001 to September 7, 2001; September 8, 2001 to September 14, 2001; September 15, 2001 to September 21, 2001; and, September 22, 2001 to September 28, 2001;
7. photocopies of earnings statements from EDA Select Temporaries, Inc., for the pay periods ending: November 4, 2001; December 23, 2001; July 21, 2002; and, December 28, 2003;
8. photocopies of Urgente Express money transfer receipts dated [month illegible] 26, 2001 and [month illegible] 12, 2001;

9. a photocopy of a Verizon billing statement for the billing period from November 11, 2001 to December 10, 2001; and,
10. a photocopy of a Verizon overdue billing notice dated January 10, 2002.

On January 14, 2005, the director reopened the case and denied the application again, finding that the applicant had not submitted sufficient evidence to establish his qualifying continuous presence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant submits the following:

11. a photocopy of his 2003 Massachusetts income tax return, along with a photocopy of his 2003 IRS Form 1040EZ; and,
12. another copy of No. 2 above.

The earnings statements listed in No. 1 above are dated prior to the requisite periods to establish continuous residence and continuous physical presence in the United States. The applicant's 2002 and 2003 income tax returns (Nos. 3 and 4 above), the earnings statement for the pay period ending October 24, 2004 (No. 5 above), the earnings statements from Herrera's Burritos, Inc. (No. 6 above), the earnings statements from EDA Select Temporaries, Inc. (No. 7 above), the Verizon billing statement (No. 9 above), and the Verizon overdue notice (No. 10 above) are all dated after the requisite periods.

The applicant's 2001 IRS Forms 1040 and W-2 (No. 3 above) are not sufficient to establish the applicant's residence and physical presence in the United States because they do not reflect the applicant's exact dates of residence and employment in the United States during that year. The Urgente Express money transfer receipts (No. 8 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence because the dates are incomplete.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements 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.

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.