



U.S. Citizenship  
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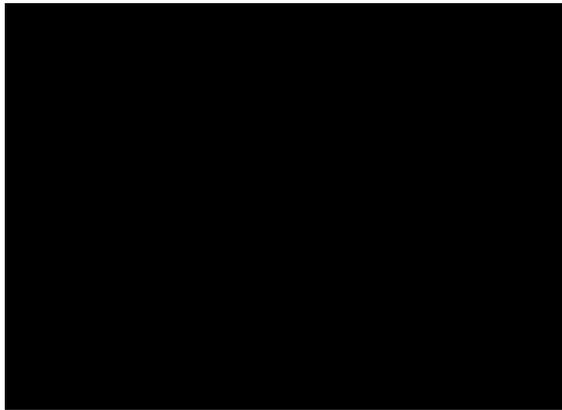
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OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 05 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: 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, 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 failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; 2) been continuously physically present in the United States since March 9, 2001; and 3) [REDACTED] the same individual.

On appeal, the applicant asserts his 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 TPS designation has been granted with validity until September 9, 2006, 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 initially submitted the following documentation along with his TPS application:

1. A photocopy of a check cashing identification card issued February 7, 2001 and bearing the [REDACTED]
2. A copy of a pay statement from Woodland Furniture Company dated March 19, 2001 and bearing the [REDACTED] as employee; and,
3. A copy of an English translated birth certificate [REDACTED]

On April 9, 2004, the applicant was requested to submit evidence showing [REDACTED] are the same person, evidence establishing the applicant's continuous residence in the United States since February 13, 2001, and evidence of the applicant's continuous physical presence in the United States since March 9, 2001. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish \*his eligibility for TPS and denied the application on July 22, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

4. Copies of pay statements from Woodland Furniture Company bearing the name [REDACTED] [REDACTED] employee and dated March and April of 2001;
5. A photocopy of an El Salvadoran passport issued [REDACTED] in Long Island, New York, on September 10, 2002;

6. A copy of an account statement from Fox Bend Apartments dated October 10, 2001, with an escrow deposit on February 28, 2001, and bearing the [REDACTED] resident; and,
7. A copy of a final court disposition from District Court of the County of Suffolk, New York in which it is stated that the [REDACTED] was convicted of one count of Marijuana possession on March 17, 2004.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence, and continuous physical presence in the United States during the period from February 13, 2001, to April 12, 2001. There has been no evidence to show that [REDACTED] is the same individual and therefore, the account statement (No. 6 above) cannot be used to establish the applicant's continuous residence and continuous physical presence. The applicant claims to have been present in the United States since December of 1998; however, there has been no corroborative evidence submitted to substantiate the pay statements (Nos. 2 and 4 above) he submitted as evidence.

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 director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the evidence shows that the applicant was convicted of one count of Marijuana possession in the District Court of the County of Suffolk, New York, on March 17, 2004 (No. 7 above). An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act. In addition, the record of proceeding shows that there is a 1999 outstanding warrant for the removal and deportation of the applicant issued April 6, 1999. For these additional reasons, the application will be denied.

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.