



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

[EAC 04 080 50815]

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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for 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 initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 19, 2001.

The director denied that initial application on December 24, 2002, due to abandonment because the applicant failed to respond to a request for additional evidence dated January 15, 2002. The applicant was informed that there is no appeal from a denial due to abandonment, but he could file a motion to reopen within 30 days of the date of the denial decision. The applicant failed to file a motion to reopen the matter.

The applicant filed the current Form I-821, Application for Temporary Protected Status, with CIS on January 20, 2004.

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 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 that he entered the United States without inspection in July 1991. In support of his prior TPS application, the applicant submitted the following:

1. photocopies of two generic rent receipts dated November 30, 2000 and December 31, 2000, respectively.

On May 3, 2004, the applicant was requested to submit 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 26, 2004.

On appeal, counsel for the applicant states that the applicant has been continuously present in the United States since 1989. Counsel submits the following:

2. a photocopy of the applicant's 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, [REDACTED] New York;
3. a photocopy of a pay check dated November 30, 2002, [REDACTED]
4. photocopies of billing statements from [REDACTED] New York, dated June 12, 2002 and October 10, 2002;
5. photocopies of generic rent receipts dated: May 1, 2001; June 1, 2001; and, November 1, 2002;
6. a photocopy of a letter dated May 22, 2001, from the Social Security Administration acknowledging receipt of the applicant's application for a Social Security Card; and,
7. an employment letter dated July 31, 2004, from [REDACTED] stating that the applicant worked for his company during the 2001 season.

The generic rent receipts (No. 1 above) predate the requisite periods to establish continuous residence and continuous physical presence in the United States. The employment affidavit from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit format, [REDACTED] not provide the applicant's duties with his company, his exact dates of employment, or the address where the applicant resided during the period of his employment. Additionally, although [REDACTED] states in his employment letter (No. 7 above) that the applicant worked for him during the 2001 season, the applicant submitted a copy of a pay check from [REDACTED] dated November 30, 2002 (No. 3 above), and a copy of his 2002 IRS Form W-2 [REDACTED] (No. 2 above). The applicant has not provided

any explanation for this contradiction between [REDACTED] statement that the applicant worked for him in 2001 and the fact that he has submitted only evidence reflecting employment for [REDACTED] 2002. 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. Further, it is incumbent on 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant has not submitted any evidence to establish his qualifying continuous residence in the United States from February 13, 2001 to May 1, 2001 (No. 5 above), nor has he submitted any evidence to establish his continuous physical presence in the United States from March 9, 2001 to May 1, 2001. Although the applicant has submitted evidence reflecting his residence and physical presence in the United States in May and June 2001 and from May through November 2002, he has not provided any evidence to establish his qualifying continuous residence and continuous physical presence in the United States between November 2002 and January 20, 2004, the filing date of the current TPS application.

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.

It is noted that the applicant was apprehended by the United States Border Patrol near the Fabens, Texas, Port of Entry after having entered the United States without inspection, and was placed in removal proceedings. On September 5, 1996, an Immigration Judge in El Paso, Texas, ordered the applicant removed to El Salvador in absentia. The record contains an outstanding Form I-205, Order of Removal/Deportation, dated September 5, 1996.

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.