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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 06 2006**

[EAC 01 207 51779]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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, the applicant submits 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 application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 7, 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 October 10, 2000. In support of his application, the applicant submitted the following:

1. an affidavit from [REDACTED] stating that the applicant entered the United States through Piedras Negras, Texas, on October 10, 2000.

On January 29, 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 continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on September 28, 2004.

On appeal, the applicant states that he never received the Notice of Intent to Deny dated January 29, 2004. He explains that mail delivery at his apartment building is not very reliable, and he believes the notice may have been put in the wrong mailbox. The applicant submits the following:

2. a photocopy of his Virginia Identification Card issued on March 30, 2001;
3. a photocopy of his 2001 Internal Revenue Service (IRS) Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, along with photocopies of IRS Forms W-2, Wage and Tax Statement, from Commercial Roofing & Sheet Metal Co., Inc., in Cheverly, Maryland, and from American Painting & Janitorial Co., Inc., in Bethesda, Maryland;
4. a photocopy of the applicant's 2002 IRS Form 1040EZ and photocopies of his 2002 IRS Forms W-2 from Foodway, Inc., in Alexandria, Virginia, and from Parker Masonry/Tile, Inc. in Sterling, Virginia;
5. a photocopy of the applicant's 2003 IRS Form 1040, U.S. Individual Income Tax Return, along with photocopies of the applicant's 2003 IRS Forms W-2 from Qualify Building Maintenance, Inc., in Washington, D.C., and from Commercial Roofing & Sheet Metal Co., Inc., in Cheverly, Maryland; and,
6. an affidavit dated October 21, 2004, [REDACTED] stating that the applicant entered the United States in October 2000 and has lived in this country since that date.

The applicant's 2001, 2002, and 2003 federal income tax returns and Forms W-2 (Nos. 3, 4, and 5 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States because they do not reflect the applicant's specific dates of residence and physical presence in the United States during those years, and they are not supported by corroborative evidence such as earnings statements or letters from the applicant's employers specifying his exact dates of employment during those years.

Without additional corroborative evidence, the affidavits from [REDACTED] (No. 1 above) and [REDACTED] (No. 6 above) are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

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 Eagle Pass, Texas, on October 13, 2000, after having entered the United States without inspection. The applicant was placed in removal proceedings, and on October 23, 2001, the applicant was ordered removed to El Salvador in absentia by an Immigration Judge in San Antonio, Texas. The record contains an outstanding Form I-205, Warrant of Removal/Deportation, dated November 1, 2001.

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.