



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

[EAC 01 187 54873]

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.

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 has 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 April 23, 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/her Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection near San Diego, California, in 1992. In support of his application, the applicant submitted the following:

1. a photocopy of the biographic pages of his Salvadoran passport issued in New York, New York, on September 9, 1997.

On March 24, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, submitted the following:

2. a photocopy of an Employment Authorization Card valid from June 6, 2001 to September 9, 2002, indicating that the applicant applied for TPS;
3. a photocopy of a savings account statement from Citibank, New York, New York, for the period from December 13, 2001 to January 10, 2002;
4. a photocopy of a letter dated December 24, 2001, from the Department of Labor, Division of Labor Statistics, acknowledging receipt of a complaint from the applicant;
5. a photocopy of an "Authorization for Disclosure of Health Information" signed by the applicant on April 10, 2004;
6. a photocopy of a medical record dated August 20, 2001, from Winthrop University Hospital in Mineola, New York, indicating the applicant received a tetanus immunization because he had received a puncture wound;
7. photocopies of generic rent receipts dated: January 1, 2001; February 1, 2001; March 1, 2001; April 1, 2001; May 1, 2001; June 1, 2001; July 1, 2001; and, September 1, 2001;
8. photocopies of Verizon billing statements for the billing periods from January 13, 2002 to February 12, 2002 and February 13, 2002 to March 12, 2002; and,
9. photocopies of money transfer receipts dated: April 28, 1998; February 7, 1999; January 1, 2001; and, December 16, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and denied the application on August 13, 2004.

On appeal, counsel for the applicant reiterates the applicant's claim that he has lived in the United States "since 1990."

This statement contradicts the applicant's claim on his TPS application to have lived in the United States since 1992. Counsel has not provided any explanation for this discrepancy in the applicant's claimed date of entry into the United States. 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).

Counsel submits the following:

10. an affidavit dated August 25, 2004, from [REDACTED] stating that she has known the applicant since August 2000.

The applicant's passport (No. 1 above), the money transfer receipts dated April 28, 1998 and February 7, 1999 (No. 9 above) predate the requisite period to establish continuous residence in the United States, and the Employment Authorization Card (No. 2 above), the Citibank account statements (No. 3 above), the Department of Labor letter (No. 4 above), the tetanus immunization record (No. 6 above), the Verizon billing statements (No. 8 above), and the money transfer receipt dated December 16, 2001 (No. 9 above) are dated after the requisite periods.

The generic rent receipts (No. 7 above) provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as generic rent receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. Furthermore, without corroborative evidence, the affidavit from Ms. [REDACTED] (No. 10 above) is not sufficient to establish the 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 requirement described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.