



U.S. Citizenship
and Immigration
Services

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FILE:



Office:

Vermont Service Center

Date: **JAN 26 2006**

[WAC 01 295 52696]

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 record did not contain a response from the applicant to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of the applicant's claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 parole; 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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, 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).

Along with his TPS application, the applicant submitted the following documentation:

1. Copies of the applicant's El Salvadoran birth certificate along with an English translation;
2. A copy of his El Salvadoran personal identification and voter's registration cards;
3. Copies of Gigante Express receipts bearing dates of "9-8-00" and "10-5-00";
4. A letter dated August 17, 2001, from Ms. [REDACTED] who stated that the applicant lived with her from October 4, 2000 to November 30, 2000; and,
5. Copies of Western Union money transfer receipts dated May 4, 2001, May 24, 2001, June 4, 2001, and June 15, 2001.

On June 2, 2004 and on July 23, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. It is noted that these requests were sent to Mr. [REDACTED] in Petaluma and [REDACTED] California, the applicant's counsel at that time. On September 22, 2004, the

director denied the application because she determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, counsel states that the applicant did not respond to the director's July 23, 2004, request for evidence because it was not sent to the correct address. Counsel further states that the applicant had telephonically notified CIS of his new address. In addition, counsel submits the following in support of his eligibility for TPS:

6. An affidavit dated October 4, 2004, from the applicant stating that he had moved to Gaithersburg, Maryland in August 2003;
7. A copy of the applicant's change of address request form dated October 18, 2004;
8. Gigante Express receipts bearing dates of "9-8-00", "9-24-00", and "10-5-00";
9. Copies of receipts from the World Vision reflecting that the applicant has been a sponsor since August 21, 2001;
10. Copies of his account statements from WestAmerica Bank dated May 29, 2002, June 26, 2002, July 29, 2002, August 28, 2002, September 26, 2002, October 29, 2002, November 26, 2002, December 27, 2002, and January 29, 2003;
11. Copies of the applicant's earnings statements from [REDACTED] bearing dates of August 2, 2002, December 5, 2002, January 23, 2003, and March 13, 2003;
12. A copy of a inquiry printout from the California Department of Transportation dated May 20, 2002; and,
13. Copies of United States Postal Service receipts dated September 9, 2003 and September 11, 2002.

The receipts, as detailed in Nos. 3 and 8 above, and the letter from Ms. [REDACTED] in No. 4 above, predate the beginning of the requisite time period for continuous residence and continuous physical presence. In addition, the statement from Ms. [REDACTED] is not supported by corroborative evidence. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. The remaining evidence post-dates the beginning of the requisite time periods for El Salvadoran TPS. There is a gap in the evidence from October 5, 2000 and May 4, 2001, the date on the Western Union money transfer receipt as detailed in No. 5 above. 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 continuous residence and continuous 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 met this burden.

ORDER: The appeal is dismissed.