



U.S. Citizenship
and Immigration
Services

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JUN 12 2006

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE:

[EAC 01 238 51138]

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.

for Robert P. Wiemann, Chief
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 claims to be 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 originally denied the application on August 11, 2003, because the applicant had failed to respond to a request for evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The applicant appealed the director's decision on October 10, 2003. Because the appeal was not filed within the prescribed period of 33 days, on January 12, 2004, the director rejected the appeal and determined that the appeal cannot be accepted as a motion to reopen as it did not meet the requirements of a motion to reopen pursuant to 8 C.F.R. § 103.5(a)(2) and (3). The director noted that the evidence submitted "dates from October 2001 to current and prior to September 1998." On April 29, 2004, the applicant filed a motion to reopen the director's decision. The director granted the motion, and after a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on April 29, 2004.

On appeal, counsel 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 alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 valid 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 record shows that the applicant filed his initial TPS application on July 30, 2001. In an attempt to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application, the applicant submitted copies of documents dated prior to September 1998, including documents establishing that he entered the United States on July 20, 1998, and was subsequently placed in removal proceedings. He also submitted documents dated from October 2001 to June 2003.

On appeal, counsel asserts that the director factually and legally erred in denying the TPS application. He states that the applicant was initially apprehended on August 18, 1998, and has since been in the United States. He resubmits copies of Motion to Change of Venue and Order of Release on Recognizance, both dated August 18, 1998, contained in the record of proceeding and detailed above.

The record of proceeding shows that the applicant was apprehended by the U. S. Border Patrol while attempting to enter the United States without inspection on July 20, 1998, near San Luis, Arizona. A Warrant of Arrest of Alien (Form I-200) was issued on July 22, 1998; on August 18, 1998, the applicant was released on his own

recognizance (Form I-220A). On August 27, 1998, the Immigration Judge (IJ) granted the applicant's request for a change of venue from Phoenix, Arizona to New York City, New York. On September 23, 1998, in New York, the IJ terminated removal proceedings.

As determined by the director, the only evidence submitted by the applicant to establish continuous residence and continuous physical presence during the requisite period was dated from October 2001 (after the date of filing of the TPS application) and prior to September 1998. No new evidence was furnished on appeal.

The evidence furnished is insufficient to establish the applicant's qualifying continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. Although the record indicates that the applicant was present in the United States as of September 1998, the record contains no evidence of the applicant's continuous residence and continuous physical presence during the requisite period.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will also be denied for this reason.

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.