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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAR 16 2006

[REDACTED] consolidated herein]

[WAC 01 263 62581]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Cindy N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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 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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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 meets the above requirements. Applicants must 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 filed his initial Form I-821, Application for Temporary Protected Status, on August 6, 2001. In support of the application, the applicant submitted:

1. A photocopy of an abstract of his El Salvadoran birth certificate, with English translation;
2. Photocopies of [REDACTED] dated November 5, 1999; December 18, 1999; and, January 12, 2000; and,
3. Photocopies of three letters from acquaintances attesting to their knowledge of the applicant.

On July 9, 2003, the director requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

4. A letter from his aunt, dated July 29, 2003, stating that the applicant had resided with her at 863 South Wilton Place, Apt. # 1, Los Angeles, California from September 1999 to August 2001.

The director determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director denied the application on April 7, 2004.

On appeal, counsel for the applicant submits the following additional documentation:

5. Generic rent receipts for the months of December 1999, and February, March, and July 2001;
6. A document dated April 16, 2001; and,
7. Documentation dated August through November 2001.

The applicant claims to have lived in the United States continuously since August 27, 1999. It is reasonable to expect that he would have a variety of documentation to support this claim. Letters from acquaintances (No. 3, above), as well as the documentation submitted on the applicant's behalf by his aunt (Nos. 4 and 5) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The applicant has not submitted any objective evidence for the fifteen-month period from January 13, 2000 through April 15, 2001.

Based on a review of the record, it is concluded that the applicant has not submitted sufficient evidence 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 will be affirmed.

It is noted that an immigration judge ordered the applicant, in absentia, removed to El Salvador on August 22, 2001. That order remains outstanding.

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.