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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAY 03 2006

[EAC 02 194 51350]

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.

Cindy M. Gomez for

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 case will be remanded.

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 continuous residence in the United States during the requisite period.

On appeal, counsel asserts the applicant's eligibility for TPS.

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 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 section 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.
- (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 issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001.

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 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 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).

In a notice of intent to deny, dated January 20, 2005, the applicant was requested to submit evidence of his continuous residence in the United States since February 13, 2001, and a copy of his birth certificate. The applicant was also requested to submit the final court disposition of his arrest on May 11, 1995. The applicant failed to respond to the notice of intent to deny.

The director determined that the applicant failed to establish his continuous residence in the United States since February 13, 2001, and denied the application on April 14, 2005.

On appeal, counsel contends that the applicant has continuously resided in the United States since 1990. Counsel submits: a copy of the applicant's birth certificate accompanied by an English translation; a copy of

the biographical page of the applicant's El Salvadoran passport; copies of the applicant's employment authorization cards; a copy of a letter dated April 29, 2005, from the president of [REDACTED] who states that the applicant "has been gainfully employed by [REDACTED] the last 5 years;" copies of the applicant's Internal Revenue Service (IRS) Form W-2, Wage and Tax statement, for the years 2000 and 2001, showing the employer as [REDACTED] copies of IRS W-2 forms for the years 2000 and 2001, showing the employer as [REDACTED] a copy of the applicant's and his spouse's Form 1040A, U.S. Individual Income Tax Return for the years 2000, 2001, 2002, 2003, and 2004; and, a copy of the applicant's spouse's W-2 for the year 2002.

The applicant has provided sufficient documentation on appeal to establish his continuous residence in the United States since February 13, 2001. The applicant has established that he has met the continuous residence criteria described in 8 C.F.R. § 244.2 (c).

The applicant has overcome the sole reason stated by the director in his denial. However, the application may not be approved, as the applicant has not provided a copy of the final court disposition of his arrest on May 11, 1995.

As the record contains no final court disposition of the applicant's arrest on May 11, 1995, the matter will be remanded to the director to afford the applicant the opportunity to provide the final court disposition of said arrest.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further consideration, in accordance with the above, and entry of a new decision.