

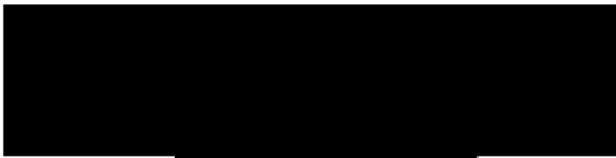


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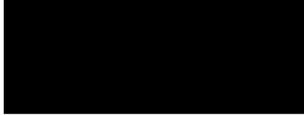
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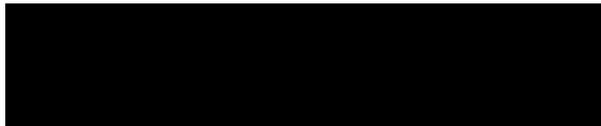
OFFICE: VERMONT SERVICE CENTER

DATE: **MAY 03 2006**

[EAC 02 210 52091]

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: Self-represented

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, 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 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 had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, 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 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 TPS application on June 7, 2002. In a notice of intent to deny dated May 21, 2003, the applicant was requested to submit evidence establishing his 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 failed to respond; therefore, the director denied the application on March 9, 2004.

On appeal, the applicant states that he has been residing in the United States since before February 13, 2001. He submits the following:

1. A statement dated March 18, 2004, from [REDACTED] indicating that he is the landlord of the applicant, and that the applicant lived at [REDACTED] Somerville, MA, from January through December 2001.
2. A statement dated March 16, 2004, from [REDACTED] Human Resources Assistant for UNICCO Service Company, Boston, MA, indicating that the applicant was employed with the company from October 1, 2002 to December 12, 2003, as a "part-time cleaner."

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence.

It is noted that the applicant indicated on his TPS application that his date of entry into the United States was "2001," and also stated on appeal that he was residing in the United States since before February 13, 2001.

Additionally, Mr. [REDACTED] (No. 1 above) stated that the applicant resided at [REDACTED] from January 2001. These claims, however, are inconsistent with CIS records and documents contained in the applicant's CIS file [REDACTED]. The Form I-213, Record of Deportable/Inadmissible Alien, indicates that on May 16, 2001, the applicant was apprehended near the Rio Grande River after entering the United States without inspection. He stated, at that time, that he departed from El Salvador on or about April 10, 2001, and traveled by bus through Guatemala and arrived in Matamoros, Mexico, on May 13, 2001. Three days later, on May 16, 2001, he waded the Rio Grande River from Mexico into the United States west of the Los Indios International Port of Entry in Los Indios, Texas. In removal proceedings held on December 4, 2002, in Harlingen, Texas, the Immigration Judge ordered the applicant removed from the United States to El Salvador. The applicant failed to appear at the Harlingen, Texas District Office on April 2, 2003, for his enforced departure.

Based on the applicant's entry into the United States on May 16, 2001, the applicant, therefore, could not have met the criteria required to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, because the applicant was not present in the United States during the requisite period described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application 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.