



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY

[REDACTED]

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **MAY 22 2006**

[EAC 02 030 53492]

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.

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 failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of 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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. An extension of the TPS designation has been granted 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).

On February 18, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. A copy of an Immigration and Naturalization asylum appointment notice dated February 17, 1999 and bearing the applicant's name and address in the United States;
2. A copy of a Gigante Express money transfer receipt dated March 15, 1999 and bearing the applicant's name as sender; and,
3. A copy of Form G-325A, Biographic Information sheet dated July 13, 2001 and listing the applicant's address of [REDACTED] Camden, New Jersey since June of 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 1, 2003.

On appeal, counsel claims that the applicant was employed by various companies who refused to supply him with employment verification affidavits due to their anticipated problems with the government. Counsel also claims that the applicant does not have any pay stubs because his employers paid him in cash. Counsel further claims that the applicant has been present in the United States since March 9, 2001, which she states is evident from the

recorded filing date of the applicant's TPS application. Counsel asserts that although the applicant's TPS application was signed in July of 2001, the applicant had contacted her office during the early part of 2001. Counsel claims that further proof of the applicant's presence in the United States is established through the birth of his daughter in the United States on April 14, 2002. The following documentation has been submitted on appeal:

4. A copy of Form G-325A, Biographic Information sheet dated September 11, 2003 and listing employers whom the applicant states he worked for from 1995 to 2002;
5. A copy of a Certificate of Live Birth which indicates that [REDACTED] was born in Camden, New Jersey on April 14, 2002, and that the applicant is her biological father;
6. An affidavit from [REDACTED] in which he states that the applicant is his brother and that he has resided at the affiant's home at [REDACTED] Camden, New Jersey since June of 2000;
7. An affidavit from [REDACTED] in which she states that she is the applicant's girl friend, that she has known the applicant since "late 2000," that they have a daughter together, and that she has been visiting the applicant at [REDACTED] Camden, New Jersey since they met in 2000; and,
8. An affidavit from [REDACTED] in which he states that the applicant is his youngest brother, that the applicant resided with him at [REDACTED] Fort Lee, New Jersey from September of 1994 to June of 2000 when he moved to lived with Atilio Duran.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. There has been no corroborative evidence submitted to support the statements made by the affiants in numbers 6 through 8 above regarding the applicant's claimed presence in the United States since 1994. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

Counsel claims that various employers have employed the applicant since 1995 but refuse to supply him with employment affidavits due to their fear of the government. A Form G-325A, Biographic Information sheet was submitted (No. 4 above) as evidence of the applicant's employment history. This evidence alone is insufficient to establish the applicant's work history during the time periods in question. Counsel further claims that the applicant was present in the United States and that this can be verified through his daughter's birth, assuming that the baby, who was born on April 14, 2002, was conceived in July of 2001. Contrary to counsel's claim, the applicant did not give birth to the child. Theoretically speaking, he did not have to be physically present in the United States for the child to be born in the country. The child's birth certificate (No. 5 above) cannot suffice as evidence of the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods. Counsel has failed to submit any evidence to substantiate her claim that the applicant contacted her office during the early part of 2001.

The Immigration and Naturalization asylum appointment notice (No. 1 above) is dated prior to the requisite time periods; and therefore, cannot be used to establish the applicant's compliance with the continuous residence and continuous physical presence requirements.

The applicant has failed to submit any corroborative evidence to substantiate the copy of the money order receipt (No. 2 above) he submitted. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. The applicant claims to have lived in the United States since September of 1994. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support this receipt; however, no such evidence has been provided. Neither has there been any corroborating evidence submitted to substantiate the Form G-325A, Biographic Information sheet dated July 13, 2001 (No. 3 above), listing the applicant's address as [REDACTED] Camden, New Jersey since June of 2000.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.