



U.S. Citizenship
and Immigration
Services

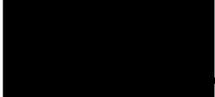
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FILE:



Office: VERMONT SERVICE CENTER
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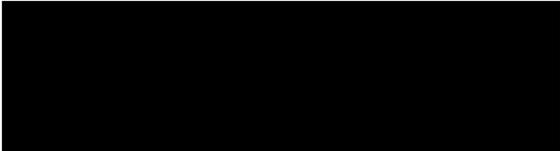
Applicant:



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.

Robert P. Wiemann, Chief
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 claims to be a 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, 2007, 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).

At the time of filing his initial Form I-821, Application for Temporary Protected Status, on September 6, 2002, the applicant indicated that he had last entered the United States without inspection in January 2000. In support of the application, the applicant submitted a photocopy of an El Salvadoran birth certificate, with English translation, purported to belong to him, and documentation indicating that his mother, [REDACTED] and father [REDACTED] had filed applications for TPS. [REDACTED]

On May 5, 2003, and again on February 25, 2004, 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 affidavits from his mother (who had subsequently

obtained status as a TPS registrant) and a friend-stating attesting to the applicant's presence in the United States since January 1, 2001. The applicant also submitted a photocopy of a Fairfax, Virginia, County Public Schools report card for the period November 2003 to January 2004.

The applicant was required to appear for fingerprinting in connection with his application. As a result, CIS records revealed that the applicant had been apprehended after having entered the United States without inspection on March 28, 2002. At that time, the applicant indicated that he was a native and citizen of Guatemala. An immigration judge subsequently ordered the applicant, in absentia, removed to Guatemala on August 16, 2002. That order remains outstanding.

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 February 2, 2005. In his denial decision, the director noted that CIS records reflected that the applicant had last entered the United States on March 28, 2002, not in January 2001 as claimed on his Form I-821.

On appeal, counsel asserts that the applicant's correct date of entry is January 2001. In support of the appeal, counsel submits generic receipts issued to [REDACTED] and a receipt indicating that the applicant received inoculations on April 15, 2002.

The applicant claims to be a citizen of El Salvador, and to have continuously lived in the United States from January 2001, to the date of filing his TPS application in September 2002. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Affidavits from relatives and acquaintances are not, by themselves, persuasive evidence of residence and physical presence. The objective documentation submitted, the report card and inoculation record, are each dated on or after April 2002. The receipts submitted on appeal are generic and have little or no evidentiary value.

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.

Beyond the decision of the director, the applicant has not satisfactorily established his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). The application must 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.