



U.S. Citizenship
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Services

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FILE: [REDACTED] Office: Vermont Service Center Date: OCT 27 2006
[EAC 03 078 50314]

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: 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, reopened, and denied again 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

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.

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 entry on or prior to February 13, 2001, 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 by the Secretary of the Department of Homeland Security, with validity 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 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 September 8, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001. The director denied the application on February 3, 2004, because she determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome. On March 10, 2004, the applicant filed a motion to reopen the director's decision. The director approved the motion and requested the applicant to submit evidence in order to establish his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following:

1. A copy of a prescription dated August 18, 2004, from Dr. [REDACTED] who stated that the applicant was seen as a patient.
2. A copy of an affidavit dated December 29, 2003, from Mr. [REDACTED] who stated that the applicant had been living with him since February 13, 2001.
3. A copy of a letter dated October 2, 2003, from [REDACTED] indicating that the applicant had worked there since the beginning of 2001 until the end of 2002.
4. A copy of an undated hand-written letter from the manager of [REDACTED] in Union City, New Jersey, stating that he had worked there since April 1, 2003.
5. A copy of a letter dated March 31, 2003, from the Social Security Administration.
6. A copy of a hand-written receipt dated May 18, 2001.

7. A copy of the Service's DBI Tenprinter application worksheet dated June 12, 2004.
8. A copy of a letter dated July 6, 2004, from Fleet Bank.

The director denied the applicant again on October 25, 2004, because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant states that he arrived the United States on February 14, 2001. The applicant also submits copies of the same evidence submitted in response to the director's request as noted above.

A review of the record of proceedings reveals that the applicant claimed on his applications for TPS and employment authorization that he did not arrive the United States until February 14, 2001. In addition, the applicant, on appeal, reaffirms his date of entry to the United States as February 14, 2001. The affidavit from Mr. [REDACTED] as detailed in No. 2 above, is not supported by corroborative evidence. In addition, given that the applicant had stated that he did not arrive until February 14, 2001, questions the validity of Mr. [REDACTED] statements that the applicant had lived with him since February 13, 2001. The remaining evidence postdates the beginning of the requisite time period for continuous physical presence in the United States. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient 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 for TPS will be affirmed.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2). In addition, beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his eligibility for late registration. Therefore, the application will 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 met this burden.

ORDER: The appeal is dismissed.