



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **OCT 31 2006**

[EAC 02 257 51896]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 continuous physical presence in the United States since March 9, 2001.

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 applicant who is a national of a foreign state 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 § 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. 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 initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 3, 2002.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on February 2, 2001. In support of his application, the applicant submitted the following:

1. an affidavit dated July 26, 2002, from [REDACTED] stating that he first met the applicant "approximately" on February 5, 2001, and that the applicant has not left the United States since that date; and,

2. an affidavit dated July 26, 2002, from [REDACTED] stating that he has known the applicant since February 2, 2001, when the applicant began attending his church.

On June 9, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted the following:

3. photocopies of earnings statements from [REDACTED], location not identified, for the pay periods ending February 9, 2003, March 23, 2003, April 6, 2003, and May 11, 2003;
4. photocopies of earnings statements from [REDACTED], dated July 3, 2003, and June 6, 2003;
5. a photocopy of a money transfer receipt dated December 22, 2002;
6. an affidavit dated September 2, 2003, from [REDACTED] stating that he has known the applicant since February 10, 2001;
7. a letter dated September 3, 2003, from [REDACTED] Owner of Complete Quality Catering Service in Voorhees, New Jersey, stating the applicant, who is a friend of some of his employees, was introduced to him in February 2001 at a company outing and has attended his company's annual fishing trip and Superbowl party for the past two years; and,
8. an affidavit dated September 2, 2003, from [REDACTED] stating that she first met the applicant in February 2001 and now she and the applicant work together.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous physical presence in the United States during the requisite period and denied the application on November 4, 2003.

On appeal, the applicant states that he doesn't have much evidence to submit because he didn't start working until March 2, 2001. He submits the following:

9. a letter from [REDACTED], Manager of R. Mac's Pub in Haddonfield, New Jersey, stating that [REDACTED] had been employed by her pub since March 2, 2001, first as a dishwasher, then as a prep person, and eventually a line cook and pizza maker;
10. an affidavit from [REDACTED] stating that he has known the applicant since March 2, 2001, and attesting that the applicant worked under the name [REDACTED] and that the applicant and [REDACTED] are one and the same person; and,
11. an affidavit from [REDACTED] stating that she has known the applicant since February 15, 2003, and that the applicant told her he had worked under the name [REDACTED]

██████████ because he didn't any CIS documents authorizing him to work in the United States.

The applicant has submitted evidence reflecting his continuous physical presence in the United States from December 22, 2002 through June 6, 2003, but he has submitted only affidavits and one letter to establish his qualifying continuous physical presence in the United States prior to December 22, 2002. Without corroborative evidence, the affidavits listed at Nos. 1, 2, 6, 7, 8, 9, 10, and 11 are not sufficient to establish the applicant's qualifying continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

Furthermore, the employment letter from Ms. ██████████ (No. 9 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit format and Ms. ██████████ does not provide the address where the applicant resided during the period of his employment for her pub. Additionally, Ms. ██████████ identifies the employee in question as ██████████ but she does not state that the applicant and ██████████ are one and the same person. The affidavits submitted by the applicant (Nos. 10 and 11 above) are not sufficient to establish that he and ██████████ are, in fact, one and the same person.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient credible evidence to establish his qualifying continuous physical presence in the United States throughout the requisite period. He has, therefore, failed to establish that he satisfies the physical presence requirement described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has also failed to establish that he has resided continuously in the United States since February 13, 2001 as described at 8 C.F.R. § 244.2(c). Therefore, the application also must 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.