



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



M1

FILE:



Office: VERMONT SERVICE CENTER

Date:

OCT 31 2006

[EAC 02 032 56061]

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:



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 administratively terminated, reopened, and denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 administratively terminated the application on May 30, 2003, because the applicant failed to respond to two requests for additional evidence dated October 29, 2002, and December 17, 2002, respectively.

On June 7, 2004, counsel for the applicant submitted a motion to reopen the matter. Counsel asserted that the applicant shares an apartment with five other individuals and never received either request for additional evidence.

The director reopened the matter and denied the application on August 30, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel for 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 has been granted, with the latest extension granted 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 (the Service), now Citizenship and Immigration Services (CIS), on September 28, 2001.

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 December 25, 2000. In support of his application, the applicant submitted the following:

1. a letter dated September 12, 2001, from [REDACTED] stating that he has known the applicant since 1990.

The director denied the application on August 30, 2004, because the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel for the applicant states that the applicant filed his TPS application on September 28, 2001, and there is no evidence that he has left the country since his initial entry in December 2000. Counsel submits the following:

2. an affidavit dated September 20, 2004, from [REDACTED] stating that the applicant has been his roommate since December 27, 2000;
3. an affidavit dated September 20, 2004, from [REDACTED] stating that the applicant has been his roommate since December 27, 2000;
4. an affidavit dated September 21, 2004, from [REDACTED] stating that the applicant attended a New Year's Eve party at his restaurant, [REDACTED] located at 6 North Summit Avenue, Gaithersburg, Maryland, on December 31, 2000;
5. a photocopy of the applicant's 2003 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, and a photocopy of his 2003 IRS Forms W-2, Wage and Tax Statement, from Delhaize America, Inc. as Agent for Food Lion, Inc., and from Costco Wholesale;
6. a photocopy of the applicant's 2002 IRS Form 1040; and,
7. a photocopy of the applicant's 2001 IRS Form W-2 from New Fortune, Inc., in Gaithersburg, Maryland.

Without corroborative evidence, the letter from [REDACTED] (No. 1 above) and the affidavits [REDACTED] (No. 2 above), [REDACTED] (No. 3 above), and [REDACTED] (No. 4 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence. 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).

The applicant's 2002 and 2003 federal income tax returns (Nos. 5 and 6 above), and his IRS Forms W-2 for the years 2001 (No. 7 above) and 2003 (No. 5 above) are not sufficient to establish the applicant's qualifying

continuous residence and continuous physical presence in the United States during the requisite periods because they do not reflect the applicant's actual dates of residence and physical presence in the United States during those years.

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 residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). 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 not submitted sufficient evidence to establish his identity and nationality. 8 C.F.R. § 244.9(a)(1). 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.