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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

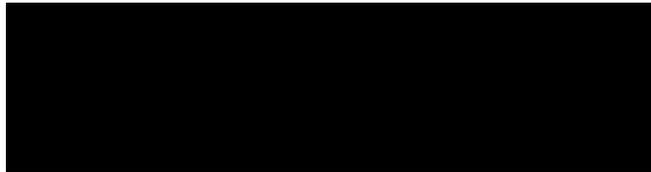
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[EAC 02 160 51714]

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.

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 his qualifying continuous physical presence in the United States.

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 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 validity of the latest extension 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 August 8, 2003, the applicant was requested to submit evidence establishing his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant was also requested to submit a Form I-601, Application for Waiver of Grounds of Excludability. In response, the applicant submitted some evidence in an attempt to establish his qualifying continuous physical presence in the United States. In addition, the applicant filed a Form I-601. The director, however, determined that the applicant failed to establish he had been continuously physically present in the United States March 9, 2001. Therefore, the director denied the application on May 5, 2004. The director noted in her decision that the applicant had stated to an immigration officer that he had left his home in El Salvador in March 2001 and entered the United States in April 2001.

On appeal, the applicant states that he was nervous and gave the wrong information to the immigration officer regarding his travels from El Salvador in March 2001. The applicant also states that he has continuously resided in the United States since November 2000. The applicant further states that he was placed in detention for 22

days. The applicant also submits some additional evidence along with his appeal in an attempt to establish his claim.

A review of the record of proceedings reveals that the applicant was apprehended by the United States Border Patrol on April 15, 2001, near Sarita, Texas. The record also indicates that the applicant stated to the Border Patrol agent at the time of his apprehension that he departed his residence in El Salvador on or about March 10, 2001. In addition, the applicant stated that he traveled through Guatemala and Mexico en route to the United States. Therefore, the applicant could not have met the requirements that he had been continuously physically present in the United States since March 9, 2001. The applicant has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for these reasons will be affirmed.

Beyond the decision of the director, it also determined that the applicant has not established his qualifying continuous residence in the United States as well. 8 C.F.R. § 244.2(c). Therefore, the application will also be denied for this reason.

Although not addressed by the director, the record of proceedings contains the Federal Bureau of Investigation report reflecting the applicant was arrested by the Los Angeles [California] Police Department on January 30, 1986, and charged with "Count of Theft Personal Property." Supplemental data from the Los Angeles Municipal Court reflects a conviction and 12 month probation for the charge of "Trespass Injure Property." CIS must address this arrest and/or conviction(s) in any future decisions or proceedings.

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 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.

ORDER: The appeal is dismissed.