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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

Date:

SEP 05 2006

[EAC 02 047 56484]

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.

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

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 (AAO) 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 continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

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

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 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 March 15, 2004, the applicant was requested to submit evidence to establish his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant submitted some evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant failed to establish his eligibility for TPS and denied the initial application on August 17, 2004.

The applicant filed a subsequent form I-821, under Citizenship and Immigration Services (CIS) receipt number EAC 04 003 52623. Again, the director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001. Therefore, the director denied that application on November 4, 2004.

The applicant filed an appeal which was received by the VSC on November 22, 2004. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the applicant had failed to establish his eligibility for TPS. The director, therefore, affirmed his previous decision and denied the initial TPS application on February 7, 2005.

On March 14, 2005, the applicant filed an appeal to the director's February 7, 2005 decision, which is now before the AAO.

On appeal, the applicant submits the following documentation: copies of receipt notices dated January 18, 2005 and February 04, 2005, regarding his applications for temporary protected status; copies of earnings statements from [REDACTED] reflecting pay dates of November 29, 2002, December 6, 2002, and December 13, 2002; a copy of a letter from the Social Security Administration dated December 26, 2001; copies of his Internal Revenue Service (IRS) Form W-2, Wage and Earnings Statements, from the year 2002; copies of two generic hand-written receipts dated July 19, 2001 and August 8, 2002; a copy of a patient record from the St. Joseph Hospital dated May 7, 2002; copies of several earnings statements from Narragansett Bay Lobsters, Inc. bearing check dates from May 30, 2002 through July 18, 2002; and a copy of an employment letter dated November 12, 2004, from [REDACTED] Clark Construction, who stated that the applicant had been an employee since October 27, 2003.

A review of the evidence submitted on appeal post-dates the beginning of the requisite time periods for continuous residence and 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 applicant has failed 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 temporary protected status will be affirmed.

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.