



U.S. Citizenship
and Immigration
Services

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FILE:

[EAC 01 222 52075]

Office: Vermont Service Center

Date: **APR 03 2007**

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 on appeal. The appeal will be dismissed.

The applicant claims to be a 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 he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that he was physically present in the United States prior to February 13, 2001.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 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. 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 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).

The applicant's initial appeal was rejected by the AAO. The case subsequently was re-opened on the director's motion by the director on remand, and denied again. The director determined that the applicant had failed to submit sufficient evidence of continuous physical presence and residence during the required period to establish his eligibility for TPS.

In this case the applicant relies primarily on letters and tax documentation. Other documents, such as generic receipts submitted by the applicant, or documentation for periods that are not relevant to a determination of TPS eligibility, are not probative and will not be accorded any evidentiary weight. Tax documentation is not necessarily probative of an applicant's presence and residence during the required period because they summarize a 12-month period, and are not filed until after the period which they cover. In certain cases the volume of earnings listed on an individual tax return can generally support an assertion that the applicant was present and employed regularly, that is not the case here as the applicant's wages for the years during the required period are nominal and undermine his assertions of residence and presence during the required period.

The applicant has submitted a letter from [REDACTED]. The letter from [REDACTED] does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). As an example, in this case

the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

The applicant's numerous letters of support from family and friends generally attesting to his presence from November of 2000, are not supported by any other corroborating or contemporaneous evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as letters "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since November of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these letters; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). In this case CIS believes that without corroborating evidence, the letters are not sufficiently probative to carry the applicant's burden.

The applicant has submitted secondary evidence and evidence which does not cover the required periods such as paystubs, and evidence which lacks credibility. The record does not establish that the applicant has resided in the United States since prior to February 13, 2001, and has been continuously present since March 9, 2001. 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, it is noted that the applicant stated that he was eligible for TPS due to the fact that he was the beneficiary of an approved Form I-130 filed on his behalf under section 203(a)(2)(A) of the Act. However, individuals who are awaiting preference allocation for an immigrant visa under section 203 of the Act are not prima facie eligible under 8 C.F.R. § 244.2(f)(2), and must establish that they are independently qualified for Temporary Protected Status.

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.