

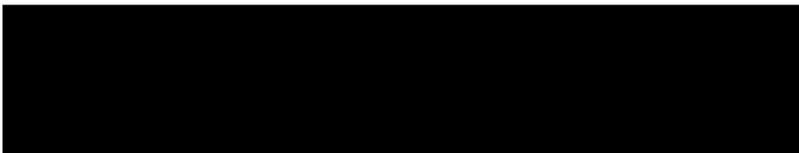


U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 23 2007

[WAC 01 173 54912]

IN RE:

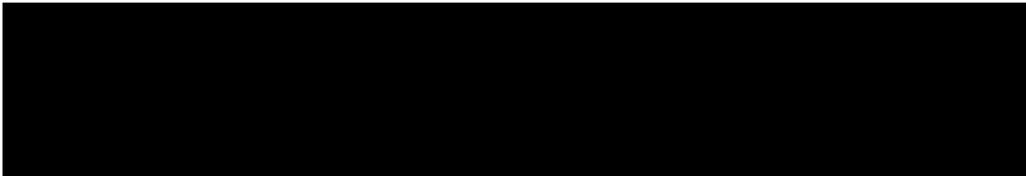
Applicant:



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 denied by the Director, California 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 denied the application because the applicant had failed to submit sufficient evidence to establish that he had continuously resided in the United States since February 13, 2001.

On appeal, counsel submits a statement and additional evidence. While counsel indicates that “a brief will follow,” to date, no additional statement or evidence has been provided. Therefore, the record shall be considered complete.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 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 record shows that the applicant filed his TPS application on April 3, 2001. The director noted that in support of his application, the applicant submitted a copy of his Employment Authorization Card, Belmont High School ID Card [it is noted that the year the card was issued was not included], and a birth certificate. The director, therefore, determined that the evidence furnished was insufficient to establish continuous residence in accordance with federal regulation and denied the application on February 23, 2004.

On appeal, counsel asserts that the director's decision failed to take into consideration other documents submitted. He submits the following:

1. A statement dated February 26, 2004, from [REDACTED] Payroll Accountant for "In-N-Out Burger," indicating that the applicant was previously hired at the establishment from August 25, 2001 to June 28, 2002, and that he was rehired on August 24, 2002, and is presently employed as a full-time associate. Also submitted are copies of earnings statements dated September 28, 2001; October 5, 2001; January 4, 2002; and January 31, 2003, issued by this employer.
2. Copies of Form W-2, Wage and Tax Statement, for 2001 and 2003; copies of Form 1040EZ, Income Tax Return, for tax years 2001 and 2002
3. A copy of a Washington Mutual Bank, statement of account for the period October 19, 2002 to November 20, 2002.
4. A copy of a charge card statement from [REDACTED] dated July 25, 2003.

5. A copy of Driver License/Identification Card Information Request from the California Department of Motor Vehicles (DMV) dated March 11, 2004, indicating that an identification card was issued on March 5, 2002, and a driver's license was issued on April 9, 2002.

It is noted that the DMV report indicates that the applicant was convicted: (1) on June 20, 2002, for 16028(a) VC, 4000(a)(1) VC, and 40508(a) VC; (2) on October 28, 2002, for 22450(a) VC; and (3) on August 26, 2003, for 16028(a) VC and 22102 VC. The actual court disposition from the court is not included in the record. CIS must address these arrests and convictions in any future decisions or proceedings.

The evidence furnished by the applicant establishes his residence and physical presence in the United States only since August 2001, after the filing of the TPS application. No evidence was furnished for the period since February 2001 to the date of filing the application on April 3, 2001.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Additionally, the applicant has failed to establish that he has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application 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 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.