



U.S. Citizenship
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Services

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FILE:



Office: Vermont Service Center

Date: AUG 01 2007

[EAC 05 210 73214]

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, 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, counsel for the applicant disputes the director's conclusions, asserting the applicant has established eligibility.

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).

In this case the applicant filed a late initial application on April 28, 2005. Evidence in the record supports that the applicant is eligible to file a late initial application based on his marriage to an alien currently eligible for TPS.

On June 29, 2006, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. The applicant, in response, provided the following documentation:

1. A copy of his passport.
2. A copy of a Virginia Identification Card, listing an address in Herndon, VA.
3. Copies of Western Union Money Orders, dated July 23, 2000, August 14, 2000, and February 10, 2001.
4. Copy of a birth certificate for the applicant's daughter, dated May 18, 2000.
5. Letter, dated February 8, 2005, signed by [REDACTED], asserting he has known the applicant since 2001.

6. Letter, dated February 8, 2005, from Shrine of the Sacred Heart, in Washington, DC, asserting the applicant has been attending the church since May of 2000.
7. Letter, dated February 21, 2005, from [REDACTED], President of Calixto Stone Work, Inc., asserting he has known the applicant since 1998, and that he works for the company.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 30, 2006.

On appeal, the applicant reasserts his claim and resubmits copies of a Virginia Identification Card, copies of money order forms, and his passport.

Counsel asserts that the evidence submitted by the applicant is persuasive, reasoning that he was required to show proof of residence in order to obtain his identification card, and that the applicant was the signing attendant on his daughter's birth certificate which indicates physical presence on that date.

The Virginia Identification card submitted by the applicant is not probative evidence of the applicant's residence or continuous physical presence because it lists an address in Virginia as of January 2000. Counsel asserts it establishes his residence from 2000 to 2005. However, other documentation submitted by the applicant, including the birth certificate, which he signed as attendant, clearly shows the applicant was living in the District of Columbia and not Virginia. This inconsistency means either the ID card is wrong, or the applicant failed to reveal his true residence or address to the Commonwealth of Virginia. In either instance the evidence is not credible, and casts doubt on the applicant's other assertions. This ID card will not be given any weight in these proceedings.

The money order receipts submitted by the applicant, all bearing addresses adjacent to counsel of record's listed address, are suspicious in nature, and due to their susceptibility to fraud are of little probative value. The receipts contain no independently verifiable information, and do not bear markings which establish they were actually issued contemporaneously with the dates listed therein. These receipts do not appear to be authentic and will not be given any weight in these proceedings.

The letters submitted in response to the director's request for evidence are also of little probative value. These letters are generic in nature, in some cases making statements as vague as "I've known the applicant since 2001," and thus add little to the applicant's assertions of continuous residence and physical presence during the required period.

The AAO would note that the applicant has submitted very little evidence, and that which was submitted lacks sufficient credibility and relevance to establish that the applicant was resident and continuously physically present during the required period.

Thus, the applicant has not submitted sufficiently credible and relevant evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13,

2001, to the date of filing. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.