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U.S. Citizenship
and Immigration
Services

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FILE:



[WAC 05 218 73522]

OFFICE: California Service Center

DATE:

FEB 01 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:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now on appeal before the Administrative Appeals Office (AAO). 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 does not have to establish his continuous residence and physical presence in the United States from the above dates because he is eligible for TPS as the minor son of his mother, who was granted TPS.

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. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. 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). *See* 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. *See* 8 C.F.R. § 244.9(b).

Though the applicant indicated on his Form I-821, Application for Temporary Protected Status, stamped as received by the service center on March 7, 2005, that his was an application for re-registration or renewal of TPS based on previously granted TPS, the record does not show any previous Form I-821 or TPS approval for the applicant. Since no Form I-821 was filed during the initial registration period of March 9, 2001 to September 9, 2002, the current Form I-821 is an application for late registration.

On February 8, 2006, the service center requested the applicant to submit evidence that he met the requirements for late registration during the initial registration period, such as being the child of an eligible TPS registrant, as well as other forms of evidence to establish his eligibility for TPS, including evidence of his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. While the applicant submitted some of the evidence requested, the director determined in his decision dated April 14, 2006, that it failed to establish the applicant's continuous residence and

physical presence in the United States during the requisite time periods. Accordingly, the director denied the application.

On appeal, the applicant asserts that he has derivative eligibility for TPS because he is the minor son of an approved TPS applicant, and submits additional documentation showing that he was under 20 years of age at the time of the appeal.

The applicant's claim of derivative eligibility for TPS is without merit. Though children of TPS eligible parents are also eligible for TPS, they must meet the same continuous residence and continuous physical presence requirements as their parents. Thus, if a minor child of El Salvadoran parents was not a continuous resident of the United States since February 13, 2001 and continuously physically present in the country since March 9, 2001, he or she is ineligible for TPS regardless of the parents' eligibility.

The record shows that the applicant first came to the United States on March 4, 2001, when he was apprehended by a U.S. Border Patrol agent at Eagle Pass, Texas, just after crossing the border illegally from Mexico. In a report prepared two days later by a Senior Patrol Agent, Record of Deportable/Inadmissible Alien (Form I-213), it was noted that the applicant claimed to be enroute to live with his mother, a resident of Los Angeles, that she had been contacted and would make arrangements to have her son picked up by a relative, and that the applicant's father, a resident of Texas, had arrived and was willing to take custody of his son. "After considering all the facts," the report concluded, "the Service determined that custody should be granted." The evidence of record, which includes such items as the applicant's immunization and other medical records, school attendance records, a document from juvenile court, and an El Salvadoran passport obtained at the Consulate General in Los Angeles, California, indicates that the applicant went to Los Angeles in March 2001 and has lived there continuously since then.

Based on the entire record, the AAO determines that the applicant has established his continuous physical presence in the United States since March 9, 2001. The evidence also clearly shows, however, that the applicant has not been a continuous resident of the United States since February 13, 2001, since he did not enter the United States until March 4, 2001. Thus, the applicant has failed to establish that he meets the eligibility criterion described in 8 C.F.R. §§ 244.2(c). Accordingly, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the record does not include the final court disposition of the applicant's arrest on May 8, 2003, by the Los Angeles Police Department on the charge of possessing a weapon at school, and any other arrests. As provided in section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), an alien shall not be eligible for TPS if he or she has been convicted of any felony or two or more misdemeanors committed in the United States.

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.