



U.S. Citizenship
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Services

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JAN 16 2007

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
[EAC 02 046 51423]

IN RE: Applicant: [REDACTED]

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.

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 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 that he had: continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts 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 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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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 initially submitted the following documentation:

1. An affidavit from [REDACTED] in which he stated that he has known the applicant since February of 1999 and that they were neighbors and co-workers.

On July 9, 2003, 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. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 6, 2003.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

2. An employment letter from [REDACTED] of [REDACTED] in which he stated that the applicant had been employed for the company since June 4, 2003;

3. An affidavit from [REDACTED] in which he stated that he has known the applicant since 2001 and that he rented a room to the applicant from January of 2001 to February of 2003; and,
4. An affidavit from [REDACTED] in which he stated that he has known the applicant as a friend since January of 2001.

The AAO remanded the appeal to the Vermont Service Center for reconsideration.

The director denied the application again on August 30, 2005, because the applicant had failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States.

The applicant appealed the director's decision and submitted the following documentation as evidence:

5. A letter from Rev [REDACTED] of [REDACTED] in which he states that the applicant has been an active registered member of the congregation since January of 2001;
6. An affidavit from [REDACTED] in which he states that he has known the applicant as a friend since January of 2001;
7. An affidavit from [REDACTED] in which he states that he has known the applicant since January 1, 2001, and that he rented a room to the applicant from January 1, 2001 to February 1, 2003; and,
8. An affidavit from [REDACTED] in which he states that he is the applicant's cousin and has known him in the United States since February 5, 2001.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant submitted affidavits and other statements as evidence of his claimed presence in the United States. The affiant's statements, regarding the applicant's claimed presence in the United States before February of 2001, are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The employment letter submitted by [REDACTED] (see number 2 above) is dated subsequent to the requisite time periods and cannot be used to access the applicant's eligibility for TPS. The letter from [REDACTED] (see number 5 above) is insufficient to establish the applicant's continuous presence in the United States since February 13, 2001.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.



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ORDER: The appeal is dismissed.