



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 274 54286]

Office: VERMONT SERVICE CENTER

Date: **JAN 30 2007**

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 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 applicant filed his initial TPS application on August 28, 2002.

The director requested that the applicant submit additional evidence to establish his eligibility for TPS. The applicant failed to respond to the director's request for evidence. The director denied the TPS application on July 31, 2003. The applicant filed an appeal on September 8, 2003. The AAO remanded the TPS application to the Vermont Service Center on November 2, 2004, in order for the Service to specify its reason for denial.

The director requested that the applicant submit evidence to establish his continuous residence and continuous physical presence in the United States. The applicant responded to the director's request for evidence on June 22, 2005. The director denied the application on July 27, 2005, 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 reasserts 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 submitted the following documentation on appeal:

1. A Verizon phone bill dated November 25, 2002, and bearing the applicant's name as customer;
2. An MCI bill dated February 13, 2003, and bearing the applicant's name as customer;
3. An affidavit from [REDACTED] in which she stated that the applicant has rented a from her at [REDACTED] Bay Shore, New York, from July 20, 2002 to September 3, 2003;

4. An affidavit from [REDACTED] in which he stated that he rented a room to the applicant at [REDACTED], Bay Shore, New York from October 1, 2000 to July 15, 2002;
5. A letter from the president of [REDACTED] in which he stated that the applicant has been employed by the company since March of 2001; and,
6. Pay statements from [REDACTED] bearing the applicant's name as employee and dated March of 2004, and April and August of 2005.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence since February 13, 2001, and his continuous physical presence since March 9, 2001, in the United States. The statements made by the affiants regarding the applicant's claimed presence in the United States before February 13, 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 utility bills and pay statements are dated subsequent to February 13, 2001 and March 9, 2001, and are therefore insufficient to establish the applicant's presence in the United States during the requisite time periods.

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.

ORDER: The appeal is dismissed.