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**U.S. Citizenship
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FILE:



[EAC 02 268 51042]

OFFICE: Vermont Service Center

DATE: JUL 20 2007

IN RE:

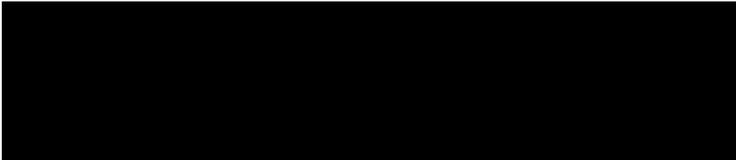
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An appeal was dismissed by the Director (now Chief), Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The AAO's previous decision will be affirmed.

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 on the grounds that the applicant failed to establish that he met the continuous physical presence and continuous residence requirements for El Salvadoran national applying for TPS in the United States, in accordance with section 244(c)(1)(A)(i) and (ii) of the Act.

The AAO dismissed the appeal. In the motion to reopen counsel submits a statement from the applicant and additional documentation pertinent to his residence and physical presence in the United States, and asserts that the applicant meets the continuous residence and continuous physical presence requirements 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

El Salvadoran nationals applying for TPS 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.

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).

The record shows that the applicant – who claims to have entered the United States without inspection in December 2000 – filed his initial Form I-821, Application for Temporary Protected Status, during the initial registration period for El Salvadoran nationals on August 19, 2002. On May 27, 2003, the director requested the applicant to submit documentary evidence that he had an established residence in the United States as of February 13, 2001, and that he had been physically present in the United States from March 9, 2001, to the date of filing (August 19, 2002). The applicant responded on July 1, 2003, with some affidavit evidence of his residence and physical presence in the United States.

On August 12, 2003, the director denied the application on the grounds that the affidavit evidence submitted by the applicant was not sufficient to establish that he met the residence and physical presence requirements

applicable to El Salvadoran nationals. On appeal the applicant submitted some additional affidavit evidence and a receipt from Gigante Express. On April 6, 2005, the AAO dismissed the appeal on the grounds that the new affidavits, like the previously submitted affidavit evidence, failed to establish that the applicant met the continuous physical presence and continuous residence requirements described in 8 C.F.R. § 244.2(b) and (c).

The applicant filed a timely motion to reopen, and points out that the AAO's decision did not address the piece of non-affidavit evidence he submitted on appeal – namely, a photocopied receipt from an international mail courier, Gigante Express, dated January 12, 2001. In support of the motion the applicant submits two additional documents: a photocopied invoice from PS Travel and Communications Corporation, dated December 22, 2000, and a receipt from Pronto Envios, dated January 26, 2001. The additional evidence warrants granting the motion to reopen, but still fails to establish that the applicant meets the TPS requirements applicable to El Salvadoran nationals of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The foregoing documents all date from December 2000 to January 2001. There is no other evidence in the record confirming the applicant's presence in the United States between January 2001 and August 2002, when the initial TPS application was filed. With respect to the previously mentioned affidavits, all of which were prepared between August 2002 and August 2003, letters from acquaintances are not, by themselves persuasive evidence of residence and physical presence in the United States. If the applicant has lived and worked in the United States since December 2000, as he claims, it is reasonable to expect that he would have some contemporaneous documentation from that one and a half year time period prior to filing for TPS.

The AAO determines that the applicant has failed to establish that he was continuously physically present in the United States from March 9, 2001, until the date he filed his initial application in August 2002, and continuously resident in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the AAO's previous dismissal of the applicant's appeal 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 that burden.

ORDER: The motion is granted. The AAO's previous decision of April 6, 2005, to dismiss the appeal is affirmed.