



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 31 2007
[EAC 04 014 51969]

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:
[REDACTED]

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.

Cindy M. Honey for
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, (VSC), and is now before the Administrative Appeals Office on appeal. The appeal will be sustained, and the application approved.

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 continuous physical presence and continuous residence during the requisite periods for TPS for El Salvadorans.

On appeal, counsel states the applicant has been physically present in the United States since August 15, 1993, to the present. Counsel further states that the applicant had filed a claim for asylum and explains that he filed his application for registration for TPS while in deportation [removal] proceedings. Counsel forwards additional documentation to bolster the applicant's claim for continuous residence and continuous physical presence.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for 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 record reflects that the applicant filed his initial TPS application on October 18, 2003.

On April 15, 2004, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. In response, the applicant forwarded:

1. A letter dated April 30, 2004, from [REDACTED] of [REDACTED], in Lindenhurst, New York. [REDACTED] states that the applicant has been employed by him since March 2000.
2. A letter dated May 12, 2004, from [REDACTED] who states the applicant has lived in his house in Bayshore, New York, since January 1, 2001.
3. A Residential Credit Certificate dated April 29, 2004, from a representative of the Verizon telecommunications company confirming the applicant has established good credit under a telephone number with a New York (631) area code since February 20, 1998.

The director found the applicant had failed to establish continuous physical presence and continuous residence during the requisite periods for TPS for El Salvadorans and denied the application.

On appeal, the applicant forwarded:

4. A letter dated September 9, 2004, from [REDACTED] of [REDACTED] in Lindenhurst, New York. [REDACTED] states that the applicant has been employed by him since March 2000.
5. A letter dated September 9, 2004, from [REDACTED] who states the applicant has lived in his house in Bayshore, New York, since January 1, 2001.

6. Copies of six Form I-766, Employment Authorization Cards, issued to the applicant and valid from February 12, 1996 to February 12, 1997, from February 13, 1997 valid to February 12, 1998, from February 13, 1998 to February 12, 1999, from February 13, 1999 to February 12, 2000, from February 13, 2001 to February 12, 2002, and from February 13, 2002 to February 12, 2003.
7. Copies of his Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements, from Dormers Express, Inc., in West Babylon, New York, for 2001, 2002 and 2003.
8. Copies of his IRS Form 1040EZ, U.S. Income Tax Return for Single and Joint Filers With No Dependents, for 2001, 2002 and 2003.

On June 17, 2003, an Asylum Officer of the New York Asylum Office interviewed the applicant concerning his Form I-589, Request for Asylum in the United States, which he filed on June 12, 1995. In his Assessment to Refer dated July 2, 2003, the officer found, in part, that the applicant had credibly testified that the left El Salvador to come to the United States in August 1993. The applicant submitted the following supplemental documentation in support of his Form I-589.

9. An affidavit dated November 14, 2002, from [REDACTED] of Copiague, New York, who states that the applicant has been physically present in the United States since 1993.
10. An affidavit dated November 14, 2002, from [REDACTED] of Copiague, New York, who states that the applicant has been physically present in the United States since 1993.
11. An affidavit dated November 15, 2002, from [REDACTED] of Brentwood, New York, who states that the applicant has been physically present in the United States since 1993.
12. A copy of a customer service letter dated June 16, 2003 from [REDACTED] of the Area I Field Assistance office of the IRS providing account information for the applicant from 1996 through 1999 and for 2001 and 2002 with the notation that the applicant's 2000 return had not been processed because it was filed on June 16, 2003.
13. Copies of his IRS Form 1040, U.S. Individual Income Tax Returns, for 1994, 1997, 1998, and 1999 along with IRS Form W-2, Wage and Tax Statements relating to those years.
14. An employment verification letter from [REDACTED] indicating the applicant had been employed from 1993 to 2001.

It is noted that from February 13, 2001 until he filed his initial application on October 18, 2003, the applicant left the United States for brief visits abroad and returned on April 22, 2002 and on June 15, 2002. Prior to each of these two visits abroad, the applicant had obtained advance permission to leave and reenter the country from the Immigration and Naturalization Service, now Citizenship and Immigration Services, by filing Forms I-512, Authorization for Parole of an Alien into the United States.

After review of the record, it is determined the applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in the regulations at 8 C.F.R. §§ 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

An alien applying for temporary protected status has the burden of proving that he or she meets the above requirements and is eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The appeal is sustained and the application is approved.