

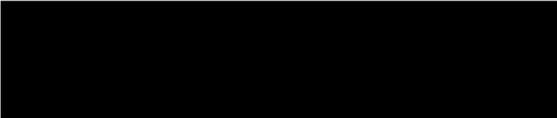


U.S. Citizenship
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Services

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JUN 27 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

[SRC 01 200 54197]

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.

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 states that he has been living in the United States since January of 2001, and he submits additional evidence.

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).

On October 8, 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. The applicant, in response, provided the following documentation:

1. A copy of the applicant's Washington, D.C. Driver's License issued on December 5, 2002;
2. A copy of a District Court of Maryland criminal printout that indicates that the applicant was arrested December 31, 1997, and charged with theft, value of \$300 plus, and that a bench warrant was issued for his arrest for failure to appear in court on February 13, 1998; and,
3. A copy of a birth certificate issued in the state of Florida dated May 29, 2001, and bearing the applicant's name and signature as the child's father.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 9, 2005.

On appeal, the applicant reasserts his claim and submits the following documentation:

4. An affidavit from [REDACTED] in which he stated that he has known the applicant to reside continuously in the United States since 2000; and,
5. A copy of a receipt from the Florida Division of Driver Licenses bearing the applicant's name and dated April 25, 2000.

The applicant has not submitted sufficient evidence to establish his qualifying residence or physical presence in the United States during the requisite time periods. There has been no corroborative evidence submitted to substantiate [REDACTED] affidavit (see number 4 above). The applicant claims to have been present in the United States since March of 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support the assertions made by the affiant; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence.

Although the copy of the birth certificate is evidence of the applicant's whereabouts on or before May 29, 2001, it is not sufficient to show that he established residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. All other evidence either pre-dates the requisite time periods or is dated subsequent to the required dates.

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.

It is noted that the record of proceeding reveals that there may be an outstanding warrant for the applicant's arrest because of his failure to appear in court as ordered on February 13, 1998.

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.