



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date: **MAR 01 2007**

[EAC 02 149 52443]

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 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 director denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity 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).

Along with his TPS application, the applicant submitted the following documentation:

1. Copies of his El Salvadoran birth certificate along with an English translation;
2. An affidavit dated March 18, 2002, from [REDACTED], who stated that the applicant has lived in the United States since February 13, 2001;
3. An affidavit dated March 18, 2002, from [REDACTED], who stated that the applicant has lived in the United States since February 13, 2001;
4. An affidavit dated March 18, 2002, from [REDACTED] who stated that the applicant has lived in the United States since February 13, 2001; and,
5. An affidavit dated March 18, 2002, from [REDACTED] who stated that the applicant has lived in the United States since February 13, 2001.

On September 21, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. In response, the applicant submitted the following documentation:

6. A letter dated October 18, 2004, from [REDACTED] who stated that she has known the applicant for about three years and that the applicant came to the United States on February 2, 2001;
7. A letter dated October 15, 2004, from [REDACTED], who stated that the applicant had been living in his apartment from February 2, 2001 until 2003. He also stated that the applicant had paid him rent during the months of March, April and May of 2001; and,
8. Copies of generic hand-written rent receipts dated March 1, 2001, April 1, 2001, and May 1, 2001.

The director denied the application on November 23, 2004, because the applicant insufficient evidence to establish his continuous residence and continuous physical presence in the United States.

On appeal, the applicant states that he has resided in the United States since February 2001 and that he desperately needs work authorization. The applicant did not submit any additional evidence along with his appeal.

The applicant, on appeal, states that he has been in the United States since February 2001; however, he does not provide any additional evidence in support of his claim. The burden of proof is upon the applicant to establish that he meets the above requirements. To meet his burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

Although already discussed by the director in his decision to deny the application, the rental receipts, as detailed in No. 8 above, are not supported by any other documentary evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts “may” be accepted in support of the applicant’s claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant’s qualifying continuous residence and continuous physical presence in the United States. In addition, the statements provided by the affiants in Nos. 2, 3, 4, 5, and 6 regarding the applicant’s claimed continuous residence and continuous physical presence in the United States do not indicate the applicant’s address since his arrival to the United States. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claimed continuous residence and continuous physical presence in the United States. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. 8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;
and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. Although, the submitted birth certificate bears a picture of the applicant, it appears that the photograph was attached to the document without an official seal. Therefore, the application will also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status 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 not met this burden.

ORDER: The appeal is dismissed.