



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: MAY 14 2007

[consolidated with

[REDACTED]

[EAC 02 261 50964]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 had continuously resided in the United States since February 13, 2001 and been continuously physically present in the United States from March 9, 2001, until the date his TPS application was filed.

On appeal counsel asserts that the applicant meets all the requirements for TPS and submits some supporting documentation.

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.

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. 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).

Citizenship and Immigration Services (CIS) records show that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on August 9, 2002, during the initial registration period for El Salvadoran nationals. On July 2, 2003, the director denied the application on the ground that the applicant had not responded to a notice of intent to deny (NOID), which requested the submission of documentary evidence to establish his eligibility for TPS. The applicant filed a motion to reopen or reconsider on December 13, 2003, which was granted on May 4, 2004. On October 25, 2004, the director sent the applicant another NOID, requesting the submission of documentary evidence showing that he resided in the United States as of February 13, 2001, and that he had been physically present in the country from March 9, 2001, to the date his application was filed (August 9, 2002). When no response was received, the director denied the application on May 24, 2005, on the grounds that the applicant had not established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the country from March 9, 2001, to the date of filing.

On appeal counsel asserts that the applicant was prima facie eligible for TPS at the time his initial application was filed in 2002. As evidence of the applicant's residence and physical presence in the United States, photocopies are submitted of an expired Employment Authorization Card issued to the applicant by the Department of Justice, with a validity period of August 22, 2002 – March 9, 2003; an expired Driver License issued to the applicant by the State of North Carolina, with a validity period of February 13, 1998 – October 5, 2006; and the applicant's Form 1040, U.S. Individual Income Tax Return, for the year 2002, dated February 8, 2003; along with a number of tax forms associated with that return. The AAO notes that all of this documentation had been submitted by counsel earlier in these proceedings – with the motion to reopen or reconsider in December 2003 – and thus was already part of the record. No additional documentation has been submitted in support of the appeal.

In accord with the director's decision, the AAO determines that the evidence of record does not establish the applicant's continuous physical presence in the United States from March 9, 2001, to the date of filing, and continuous residence in the United States since February 13, 2001, as required for TPS nationals from El Salvador under 8 C.F.R. § 244.2(b) and (c). The evidence submitted by the applicant does not include any of the types of documentation listed in the regulation at 8 C.F.R. § 244.9(a)(2) to demonstrate continuous residence and physical presence in the United States, and there is no documentation whatsoever from the years 1999-2001. Accordingly, the director's denial of the application on the foregoing grounds will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence, in accordance with the documentary requirements of 8 C.F.R. § 244.9(a)(1), to establish his nationality and identity. The application must 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 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.

The AAO notes that the applicant is subject to a Warrant of Removal/Deportation issued by the District Director in Atlanta, Georgia, on March 3, 2004, based on a final order of removal issued by an Immigration Judge on January 29, 1998.

ORDER: The appeal is dismissed.