

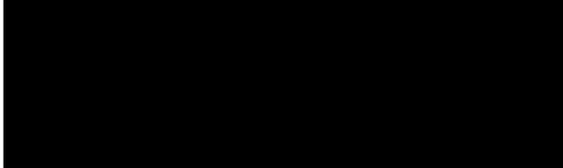
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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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SEP 20 2007

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 04 029 51901]

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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 Director, Vermont Service Center VSC) denied the application. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 12 year-old citizen of El Salvador who seeks 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 he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant's parents assert that the applicant is eligible for TPS and that denial of his application would result in extreme hardship to them.

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 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 March 9, 2009, 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).

The record reflects that the applicant filed his initial TPS application on November 7, 2003 – more than one year after the close of the initial registration period for Salvadorans. On his application, the applicant indicated that he had entered the United States without inspection on December 1, 2002. In support of his application, the applicant submitted the following photocopies of documentation:

1. The identification page of his Salvadoran passport, issued in El Salvador on April 15, 2002;
2. A health card with an effective date of December 1, 2002;
3. Health and dental documents dated January, February, and June 2003; and,
4. Phone bills of the applicant's parents dated 2001, 2002, and 2003.

On March 10, 2004, the director requested that the applicant submit further evidence establishing his qualifying continuous residence and continuous physical presence. The applicant did not respond and his application was denied on July 19, 2004. On July 30, 2004, the applicant appealed to the AAO. On October 18, 2005, the AAO remanded the case to the director for the issuance of a new decision setting forth the specific reasons for denial of the application. On December 9, 2005, the director denied the application because the applicant had failed to provide documentation sufficient to establish is qualifying continuous residence and continuous physical presence. On December 28, 2005, the applicant filed the current appeal from that decision.

In support of his appeal, the applicant provided the following photocopies of documentation:

1. His parents' Employment Authorization Documents (EADs), issued pursuant to TPS;
2. His birth certificate, with translation;
3. A New York City public schools student historical profile report showing enrollment beginning in the Fall of 2002; and,
4. His immunization records.

Based on a review of the record, the applicant has established that he is the child of an alien who is currently eligible to be a TPS registrant, and is therefore eligible to file a late application for TPS under the provisions of 8 C.F.R. § 244.2(f)(2)(iv). The late registration provisions, however, do not relax the other eligibility requirements for TPS. The child of a TPS-eligible parent who files a late initial application must still meet the continuous residence and continuous physical presence requirements under I.N.A. § 244(c)(1)(A)(i) and (ii) and 8 C.F.R. § 244.2(b) and (c).

The evidence submitted by the applicant fails to establish his qualifying residence and continuous physical presence. The record reflects that the applicant entered the United States on December 1, 2002 – almost two years after the cut-off date for the continuous residence and physical presence requirement for Honduran TPS. The applicant indicated on his application that he last entered the United States without inspection on December 1, 2002. The submitted documents only show physical presence since after December 2002. The applicant is therefore unable to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Furthermore, because the applicant entered the United States after the requisite time periods for continuous residence and continuous physical presence, he is statutorily ineligible for the benefit sought. Consequently, the director's decision to deny the application for TPS on these grounds 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 appeal is dismissed.