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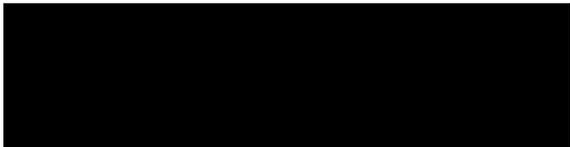
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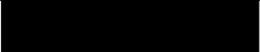
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

SEP 24 2007

[EAC 02 272 50898]

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), withdrew the approval of the application and the application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the approval of the application because the applicant departed the United States and failed to establish his qualifying continuous residence and continuous physical presence.

On appeal, the applicant asserts that he traveled to El Salvador due to a family emergency and was only gone for a short amount of time.

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 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.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to 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 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 on 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 was apprehended by the U.S. Border Patrol on September 29, 2001, attempting to enter the United States without inspection. The Immigration Judge granted the applicant voluntary departure on August 7, 2002. On August 28, 2002, the applicant timely filed his TPS application, during the initial registration period. In part 2 of the application, the applicant indicated that his date of entry into the United States was on April 28, 2000. He did not disclose that he had been apprehended by the Border Patrol on September 29, 2001. The record contains the following documents submitted by the applicant to show his qualifying continuous residence and continuous physical presence:

- A 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return;
- A 2002 IRS Form 1040 with accompanying IRS Form W-2, Wage and Tax Statement;
- A 2003 IRS Form 1040 with accompanying IRS Form W-2;
- Western Union money transfer receipts, dated January 18, 2001, February 5, 2001, February 14, 2001; April 21, 2001, May 16, 2001, July 15, 2001, December 28, 2001, and February 15, 2002;
- A receipt from the Gigante Express remittance service, dated April 6, 2003;
- A New Jersey Provisional Driver's License, issued on August 20, 2003;
- Earning statements from [REDACTED] dated from June 23, 2003 to April 9, 2004; and,
- Earning statements from an unspecified employer, dated from April 29, 2004 to September 30, 2004.

On March 20, 2006, the director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence.

On appeal, the applicant asserts that he initially entered the United States on April 28, 2000, and departed the United States sometime in August 2001, due to a family emergency. He states that he returned to the United States in September 2001. He does not provide details about the date and manner of his departure or return. Furthermore, he does not provide evidence to document his travel or the family emergency.

The evidence the applicant submits is not sufficient to establish his qualifying continuous residence and physical presence. The 2001 IRS Form 1040, can be given little weight, as it is not accompanied by an IRS Form W-2 or certification of filing with the Federal, state or local government, as required by 8 C.F.R. § 244.9(a)(2)(i). Even if it were certified as filed, the Form 1040 shows earnings for 2001 but did not offer corroborating evidence to show which dates he worked and for dates required for TPS eligibility. The majority of the evidence submitted was dated 2002, 2003, and, 2004. The only other documents submitted to show continuous residence and physical presence prior to the applicant's apprehension by the Border Patrol in 2001 are Western Union money transfer receipts. These receipts are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) states that additional documents such as money order 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 residence or physical presence in the United States. The applicant claims to have lived in the United States since April 28, 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided.

It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and 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.

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 failed to meet this burden.

ORDER: The appeal is dismissed.