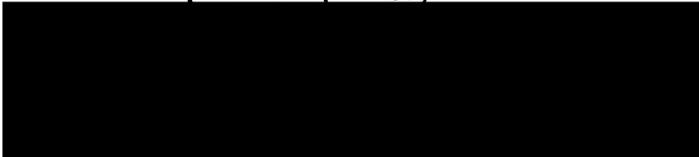




U.S. Citizenship
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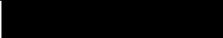
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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN 18 2008

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IN RE:

Applicant:



APPLICATION:

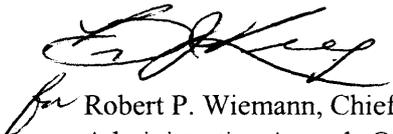
Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the appeal will be sustained.

The applicant is 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 because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits additional documentation.

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.

- (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. Subsequent extensions of the TPS designation have been granted, with the latest granted 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 meets the above requirements. Applicants must submit all documentation as required in the instructions or requested by 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On October 16, 2003, the director requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted:

1. Photocopies of documentation indicating that on August 6, 1998, an immigration judge granted him voluntary departure in lieu of deportation on or before February 9, 1999;
2. Photocopies of documentation indicating that he married a United States citizen, [REDACTED], on March 10, 2001 in Hempstead, New York, and that his spouse filed a Form I-130, Petition for Alien Relative, on his behalf on March 19, 2001;

3. Photocopies of his 1999 and 2000 Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Returns, with accompanying IRS Forms W-2, Wage and Tax Statements;
4. Photocopies of his and his spouse's joint 2001 IRS Form 1040, with accompanying IRS Forms W-2; and,
5. Photocopies of bank account statements addressed to the applicant and his spouse, dated July 2002 through July 2003.

The director determined that the applicant had not established his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods and denied the application on March 24, 2004.

On appeal, the applicant submits:

6. A letter, dated April 8, 2004, from the general manager of The Cheesecake Factory in Westbury, New York, stating that the applicant had been employed since August 12, 1997;

It is noted that the record reflects that a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, filed by the applicant on January 10, 2003, was approved on May 21, 2003. Furthermore, an un-adjudicated Form I-485, Application to Register Permanent Residence or Adjust Status, filed by the applicant on March 27, 2002, remains in the record.

Based on a review of the record, it is concluded that there is sufficient evidence contained in the record to establish that the applicant 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 will be withdrawn and the appeal will be sustained.

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. Here, the applicant has met this burden.

ORDER: The director's decision is withdrawn and the appeal is sustained.