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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

FILE:

[REDACTED]

OFFICE: Vermont Service Center

DATE: MAR 28 2008

[EAC 05 040 50857]

INRE:

Applicant:

[REDACTED]

APPLICATION:

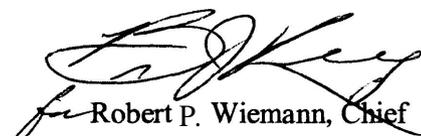
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for 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 citizen of El Salvador who is seeking Temporary Protected Status (fPS) 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; 2) been continuously physically present in the United States since March 9, 2001; and 3) eligibility for late registration.

On appeal, the applicant claims that he is a minor child of a TPS registrant and that he has continuously resided in the United States since October 2000.

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 EI 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 designation of TPS for EI Salvadorans has been extended several times, 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 applicant was requested to submit evidence establishing his continuous residence since February 13, 2001 and continuous physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. The applicant, in response, submitted evidence in an attempt to establish his continuous residence and his continuous physical presence in the United States. The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 27, 2006.

On appeal, the applicant claims that he has been continuously physically present in the United States since October 2000. He further states that he made a brief departure to his country due to a family emergency from July 2004 to August 2004. He also states that he has never left the United States for more than one month and has never left again since that brief departure, and submits a copy of his Salvadoran birth certificate and an English translation; copies of Form 1040, U.S. Individual Income Tax Return, for the years 2004 and 2005; and, copies of money transfer receipts dated February 10, 2006, December 26, 2005, and May 9, 2005.

The applicant reasserts on appeal that he is eligible for TPS because his parent had been granted TPS. However, while regulations may allow children of TPS beneficiaries to file their application after the initial registration

period had closed; these regulations do not relax the requirements for eligibility for TPS. The child is still required to meet the continuous residence and continuous physical presence requirements as provided in 8 C.F.R. §§ 244.2 (b) and (c).

The applicant has failed to establish that he is eligible for late initial registration as the child of a TPS recipient. It is noted that on her Form 1-821, Application for Temporary Protected Status, Part 3, Information about your spouse and children, signed and dated on August 30, 2003, the applicant's mother did not include any name on the list; instead, "N/A" was written on that part. Consequently, the director's decision to deny the application on this ground is also affirmed.

The evidence submitted establishes that the applicant has not been continuously resident or continuously physically present in the United States during the requisite periods. Moreover, the record reveals that the applicant was apprehended by the U.S. Border Patrol as he attempted to enter the United States on August 31, 2004, which is subsequent to the eligibility period. Consequently, the applicant did not reside in the United States as of February 13, 2001, and was not physically present in the United States from March 9, 2001 to the filing date of this application. Therefore, he could not have satisfied the continuous residence and continuous physical presence requirements. The director's decision to deny the application for temporary protected status on these grounds will be affirmed.

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 this burden.

ORDER: The appeal is dismissed.