U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

MAY 25 2004

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

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.

for Robert P. Wiemann, Director
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 native and 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 determined that the applicant failed to submit evidence to establish that he had continuously resided in the United States since February 13, 2001 and that he had been physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the applicant's medical records establish that he has maintained continuous residence and physical presence in the United States during the requisite period. Counsel states that the applicant cannot furnish additional evidence of residence because he was not able to enroll in school when he first came to the United States. Counsel submits an affidavit from the applicant's mother.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;

(e) Is not ineligible under 8 C.F.R. § 244.4; and

(f) (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 of proceeding confirms that the applicant filed his TPS application on March 16, 2002. The applicant stated on the Form I-821 application that he entered the United States without inspection in January 2001.

The applicant was requested on July 1, 2002 and again on March 4, 2003, to submit evidence to establish his continuous residence in the United States since February 13, 2001, and evidence to establish his physical presence in the United States since March 9, 2001. In response, the applicant submitted the following documentation:

1.) medical records from The [redacted] Family Health Center, Inc., for the period from May 7, 2001 through March 2003;
2.) a CenterCare card, showing an effective date of August 1, 2001;
3.) a card from Saint Vincent's Hospital Outpatient Services; and,

4.) an appointment card indicating the applicant had an appointment at the Saint Vincent's Hospital Medical Center on August 22, 2001.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application on April 29, 2003. On appeal, counsel states that it is not possible to provide evidence to establish the applicant's continuous residence and physical presence in the United States from February 2001. He states that the applicant's mother attempted to enroll the applicant in pre-school in January 2001, but she was informed that the school year had started in September 2000 and she must wait until September 2001 to enroll him in school. Counsel submits an affidavit from the applicant's mother attesting to her efforts to enroll the applicant in school. In addition, counsel asserts that evidence from The Joseph P. Addabbo Family Care Center, Inc. from May 7, 2001 through March 26, 2003, establishes that the applicant had resided in the United States within the requisite period.

Counsel submits a copy of the Employment Authorization Card of the applicant's mother. While regulations may allow children of aliens who are TPS-eligible to file their applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. Counsel maintains that the documentation submitted by the applicant reflects that the applicant resided in the United States during the requisite period. However, it cannot be concluded from the evidence provided that the applicant entered the United States prior to February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

The applicant has not submitted sufficient evidence to establish that he has met the criteria 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.

The burden of proof is upon the applicant to establish that he 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.