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U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 02 221 51590]

Office: Vermont Service Center

Date: JUN 10 2005

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, 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 is 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 denied the application because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the grounds of denial had not been overcome.

On appeal, the applicant submits a statement and additional evidence in support of his application for TPS.

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 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.

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 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. 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 September 9, 2006, 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).

On June 10, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. On August 12, 2003, the director denied the application because he determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, the applicant states that he did receive the director's notice dated June 10, 2003, requesting additional evidence. The applicant also states that he went to "an office" asking for assistance to send the documentation to the Service; however, that office sent the documents to an incorrect address. In addition, the applicant states that he is sending copies of the evidence along with his appeal. The applicant provides the following documentation: a copy of a letter to the Service from the applicant dated September 14, 2002, requesting another fingerprint appointment; copies of United States Postal Service return receipt card dated February 24, 2003; a copy of a Notice of Intent to Deny dated February 11, 2003, regarding the applicant's Application for Employment Authorization; a copy of an Applicant Information Worksheet from the Application Support Center dated February 22, 2003; a copy of a letter from the applicant to the Service dated September 2, 2003, indicating his change of address.

According to the applicant's statements on appeal, he did receive the director's June 10, 2003 request for evidence. In addition, the applicant states that he had previously sent all the documents on February 24, 2003, and he provides copies of the United States Postal Service return receipt card bearing the same date.

A review of the record of proceedings reflects that on February 11, 2003, the director sent a Notice of Intent to Deny the applicant's Form I-765, Application for Employment Authorization [SRC-03-014-53593]. The applicant responded to this request on February 24, 2003, and submitted copies of his previously issued Employment Authorization card; a copy of the Service's Approval Notice of his Application for Employment Authorization dated July 16, 2002; and a copy of the applicant's fingerprint notification dated July 17, 2002.

Although the applicant provides proof that he did respond to the director's request for evidence regarding his Employment Authorization, the evidence submitted by the applicant on appeal, however, does not overcome the director's reasons for denial of his application for Temporary Protected Status. In his June 10, 2003 request, the director specifically requested the applicant to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The evidence submitted by the applicant on appeal, however, does not overcome these grounds for denial. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c).

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.