



U.S. Citizenship
and Immigration
Services

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FILE:

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[EAC 02 204 51438]

Office: VERMONT SERVICE CENTER

Date: DEC 08 2006

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: 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 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 establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until September 9, 2007, 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 May 21, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. A copy of a memo from Roosevelt Union Free School District dated May 27, 2003 in which it is stated that the applicant is a student at the school;
2. A copy of an undated letter bearing the applicant's name as a dependent participant to a participating pharmacy; and,
3. A landlord's letter bearing the names of the applicant's father as tenant and [REDACTED] as the landlord for the premises known as [REDACTED], in which it is stated that the applicant's father has resided at that address since February of 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 31, 2003.

On appeal, the applicant states that he is eligible for TPS because his father is a current TPS registrant and he submits the following documentation:

4. A copy of a letter from [REDACTED] Urgente Express Inc. in which she states that the applicant has been a client with the international carrier service since February of 2001;
5. An affidavit from [REDACTED] in which she states that she has known the applicant since 1986 and that his address is [REDACTED];
6. A landlord's letter listing [REDACTED] as the landlord and the applicant's father as the tenant at [REDACTED] since February 1, 2001;
7. A copy of the previously submitted memo from Roosevelt Union Free School District dated May 27, 2003 in which it is now stated that the applicant has been a student at the school since January 28, 2002;
8. Copies of the applicant's New York State Immunization Records;
9. Copies of the applicant's school records from Roosevelt High School covering the school periods from April 19, 2002 to May 13, 2003; and,
10. A copy of an affidavit from [REDACTED] in which she states that she has known the applicant since the year 2001 and that his address is [REDACTED], Roosevelt, New York.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the period from February 13, 2001 to May 24, 2002. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. The affiants (see numbers 5 and 10) have not demonstrated that their knowledge of the applicant's entry into the United States is independent of their personal relationship with the applicant. If this knowledge is based primarily on what the applicant told them about his entry into the United States, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's residence in the United States.

The landlord records (see number 3 and 6 above) do not validate the applicant's residence and physical presence in the United States during the requisite time periods. The participating pharmacy letter is not dated and cannot be used to establish the applicant's TPS eligibility. There has been no corroborating evidence submitted to support the Urgente Express Inc. letter (see number 4 above) submitted by the applicant. The applicant's school and immunization records (see numbers 1, 7, 8, and 9 above) are dated subsequent to February 13, 2001 and March 9, 2001; and therefore, are not sufficient to establish his continuous residence and continuous physical presence.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.



ORDER: The appeal is dismissed.