

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

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[REDACTED]

FILE:

[EAC 03 032 52783]

Office: VERMONT SERVICE CENTER

Date: JAN 06 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened on motion, and again denied by the Director, Vermont Service Center. The matter 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 initially denied the application on May 15, 2003 because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The director also found that the applicant had failed to submit sufficient evidence to establish his nationality and citizenship, and that he had failed to file his TPS application within the requisite time period.

The applicant filed his appeal on September 6, 2003. The director treated the appeal as a Motion to reopen because it had been filed later than the prescribed period of 30 plus 3 days.

On motion, the director determined that the applicant had failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States. The director also determined that the applicant had failed to submit sufficient evidence to establish that he was a citizen or national of El Salvador. The director affirmed the previous decision.

On appeal, the applicant reasserts 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 re-parole; 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. A subsequent extension of the TPS designation has been granted 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 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 first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that he is a citizen or national of El Salvador.

The applicant claims to be a native and citizen of El Salvador.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant initially submitted a copy of his El Salvadoran Cedula de Identidad Personal.

On March 27, 2003, the applicant was requested to submit evidence to show that he is a citizen or national of El Salvador. The applicant failed to submit evidence regarding his citizenship or nationality in response to the director's request for evidence.

The director determined that the applicant had failed to establish that he was a citizen or national of El Salvador and denied the application on May 15, 2003.

On motion, the applicant submitted a translated copy of his El Salvadoran birth certificate.

The director denied the TPS application on motion determining that the applicant had failed to submit evidence of his nationality or citizenship.

On appeal, the applicant asserts that he is a citizen of El Salvador and submits a copy of his El Salvadorian birth certificate in Spanish along with its English translation.

On review of the record, the applicant has provided sufficient evidence to establish that he is a citizen or national of El Salvador. The applicant has provided a copy of his El Salvadoran birth certificate along with an English translation that bears his name, date of birth, place of birth, mother's name, and father's name. The applicant also submitted a copy of his Cedula de Identidad Personal that contains his name, nationality, and date of birth. Therefore, the director's decision will be withdrawn with respect to this issue.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following documentation as evidence:

1. A copy of a letter [REDACTED] which he stated that he met the applicant in 1999 through mutual friends and that they have maintained a friendship by visiting each other and by staying in touch;
2. A copy of a money order receipt from Gigante Express dated January 14, 2003 and bearing the name [REDACTED]
3. A copy of a money order receipt from Western Union dated March 16, 2003 and bearing the applicant's name as sender; and,
4. A copy of a letter addressed to the applicant in College Park, Maryland, and containing an illegible post date.

The applicant was requested on March 27, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

5. A shipping receipt with an unreadable date of delivery.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 15, 2003.

On motion, the applicant submitted the following documentation:

6. A copy of a money order receipt from Gigante Express dated January 10, 2001 and bearing the applicant's name; and,

7. Copies of rent receipts dated December 1, 2000, and January, February, and March of 2001 and bearing the applicant's name as renter.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States and denied the application on motion on October 7, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

8. A copy of an affidavit [REDACTED] which he states that the applicant has rented a room from him at [REDACTED] from January of 2001 to March of 2003; and,
9. A letter of employment from [REDACTED] which he states that the applicant has been an employee of Houston Trade company since 2001 in the capacity of an electrical helper.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. It is noted that items 2 and 3 above are dated subsequent to the requisite time period, and therefore cannot be used to establish continuous residence and continuous physical presence. There has been no corroborative evidence submitted to support the copies of the money order receipts (Nos. 2, 3, and 6 above) submitted by the applicant. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. The applicant claims to have lived in the United States since December 18, 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Neither the envelope addressed to the applicant (No. 4 above) nor the shipping receipt (No. 5 above) contains readable dates of delivery, and therefore is not sufficient to establish the applicant's presence in the United States during the requisite time period.

The employment letter from [REDACTED] little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form, does not specify the exact dates in 2001 that the applicant was employed, and it does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location of the business, or verify that the business was even located inside the United States.

The rent receipts (No. 7 above) do not contain an address and appear to be fabricated based upon the number and date sequences. Contrary to the statement made [REDACTED] in number 8 above, there has been no corroborating evidence submitted to demonstrate the applicant's residence from January of 2001 to March of 2003.

The applicant has failed to submit sufficient evidence 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 on these grounds will be affirmed.

Beyond the decision of the director, another issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 13, 2002.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

¹The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the applicant had failed to establish his eligibility for late registration. For this additional reason, the TPS application will be denied.

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 with respect to the late registration, continuous residence, and continuous physical presence requirements. 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.