



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: **MAR 27 2007**

[EAC 02 077 54020]

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:

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 determined that the applicant failed to establish he had: 1) been continuously physically present in the United States since March 9, 2001; and 2) failed to provide a Form I-601, Application for Waiver of Ground of Excludability. The director, therefore, denied the application.

On appeal, the applicant asserts that he is a national of El Salvador and entered the United States on February 17, 1991. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite 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 shows that the applicant filed his TPS application on December 26, 2001. On March 29, 2004, the applicant was provided the opportunity to submit evidence establishing continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The director also determined that the applicant was found to be inadmissible under INA § 212(a)(6)(C) and the applicant was also requested to submit a Form I-601, Application for Waiver of Ground of Excludability. The applicant failed to respond to the notice. The director therefore denied the application.

On appeal, the applicant states that he is a national of El Salvador and entered the United States on February 17, 1991. According to the applicant, he has complied with all the requirements to be eligible for TPS. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. Specifically, the applicant submits the following:

1. Copies of a Work Order and a Customer, Vehicle and Tire Identification form from Firestone Tires dated January 27, 2001.
2. A copy of a Residential Lease/Rental Agreement dated February 15, 2001.
3. Copies of Verizon bills dated March 20, 2001 and June 20, 2001.
4. A copy of a pay stub dated June 6, 2001.

The applicant also states that he never committed fraud, misrepresentation or falsely claimed United States citizenship. The evidence provided by the applicant indicates the applicant was present in the United States from January 2001 to June 2001. However, the applicant has not provided evidence to establish continuous physical presence in the United States from March 9, 2001 to the filing date of the TPS application. Furthermore, CIS records indicate that the applicant presented fraudulent documents upon his entry into the United States on February 17, 1991.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Furthermore, the applicant has not submitted a Form I-601, Application for Waiver of Ground of Excludability. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the director's decision, it is noted that a Federal Bureau of Investigation (FBI) Fingerprint Results Report indicates that the applicant was arrested on September 16, 2004 by the Boston, Massachusetts Police Department for "Indecent Exposure." The final disposition for this arrest is not included in the record. It is also noted that the applicant has failed to declare on his applications that he has ever been arrested. CIS must address these arrests in any future proceedings.

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 temporary protected status 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.