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

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FILE:

[EAC 04 007 51289]

Office: Vermont Service Center

Date:

MAY 31 2007

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 (VSC), and is now before the Administrative Appeals Office (AAO) 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts his claim of eligibility for TPS and submits some evidence in an attempt to support his claim.

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 except as provided 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.

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 entry on or prior to February 13, 2001, 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. Subsequent extensions of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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).

Along with his TPS application, the applicant submitted photocopies of the following documentation:

1. His El Salvadoran birth certificate along with an English translation;
2. His El Salvadoran passport;
3. An incident report dated April 1, 2003;
4. An Employment Authorization Document (EAD) and Social Security card belonging to his father, [REDACTED]; and,
5. An EAD and Social Security card belonging to his mother, [REDACTED]

On May 12, 2003, the director requested the applicant to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant responded to the director's request and submitted the following additional documentation:

6. An affidavit dated June 5, 2004, from his father stating that the applicant had been residing with him since 1999;
7. Copies of the applicant's EAD and Social Security card;

8. A church letter dated May 24, 2004, from [REDACTED] stating that he has personally known the applicant since January 2001; and,
9. A letter dated May 27, 2004, from [REDACTED] stating that the applicant is a student at Plainfield School District.

The director determined that the applicant did not establish his qualifying continuous residence and continuous physical presence in the United States, and therefore, denied the application June 21, 2004.

On appeal, the applicant's father submits the following further evidence in support of his son's application for TPS:

10. A second church letter, dated June 28, 2004, from [REDACTED] stating that he has personally known the applicant since Jan 2001;
11. A second letter, dated July 8, 2004, from [REDACTED] stating that the applicant is a student at Plainfield School District;
12. A copy of a PSEG billing statement for the month of June 2001, bearing the name of the applicant's father; and,
13. An affidavit, dated July 19, 2004, from [REDACTED] stating that he has known the applicant and his family since 1999.

The church letters from [REDACTED] have 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests. The statement provided by [REDACTED] regarding the applicant's claimed residence in the United States is not supported by corroborative evidence during the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. Furthermore, the report detailed in No. 3, above, post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. The billing statement, as detailed in No. 14, does not reflect the applicant's name. In addition, the letters from [REDACTED] do not state when the applicant began as student at the Plainfield School District.

A review of the records of the parents of the applicant reveals that his father and mother indicated on their applications for TPS and employment authorization filed on April 18, 2001, and on September 16, 2002, that the applicant was residing in El Salvador.

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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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 met this burden.

ORDER: The appeal is dismissed.