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U.S. Citizenship
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Services

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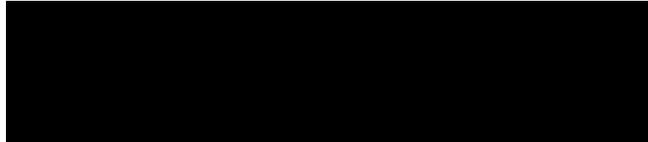
[EAC 02 250 54535]

Office: VERMONT SERVICE CENTER

Date: AUG 01 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: 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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 denied the application because the applicant failed to establish his nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a brief statement and additional documentation.

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.

- (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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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 meets the above requirements. Applicants must 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial TPS application, the applicant submitted the following documentation:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A letter, dated May 2, 2003, from Restaurant Depot, Melville, New York, stating that the applicant had been employed since November 28, 2000;
3. A "Letter of Landlord Reference," dated June 12, 2002, from [REDACTED] stating that she had known the applicant since January 2000;
4. A "Letter of Good Moral Conduct Reference," dated June 12, 2002, from [REDACTED] stating that he had known the applicant since October 1998; and,
5. A "Letter of Good Moral Conduct Reference," dated June 12, 2002, from [REDACTED] stating that she had known the applicant since January 2000.

On June 13, 2003, the applicant was requested to submit evidence to establish his nationality. He was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. In response, the applicant submitted:

6. A letter, dated June 30, 2003, stating that the applicant had been employed as a full-time maintenance person at the Extended Stay America Hotel since February 2, 2001; and,
7. A generic rent receipt, dated December 1, 2000.

The director determined that the applicant had not submitted sufficient evidence to establish his nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on September 9, 2003.

On appeal, the applicant submits the following additional documentation:

8. A photocopy of the identification page from his El Salvadoran passport; and,
9. A letter, dated October 8, 2003, from [REDACTED] stating that the applicant had resided in the United States since October 2000.

The applicant claims to have entered the United States in May 2000, and to have continuously resided in the United States since February 13, 2001, and have been continuously physically present since March 9, 2001, to the date of filing his TPS application on July 26, 2002. It is reasonable to expect that he would have a variety of contemporaneous evidence, as described in 8 C.F.R. § 244.9, to support this claim. Letters of reference from acquaintances (Nos. 3, 4, 5, and 9, above) are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The employment letters (Nos. 2 and 6) have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. §

244.9(a)(2)(i). Specifically, they are not in the form of affidavits and do not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any). Furthermore, the employment letters are not supported by credible, objective evidence such as the applicant's earnings statements, pay stubs, and/or tax records.

Based on a review of the record, it is concluded 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). Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

In connection with his TPS application, the applicant was required to be fingerprinted. A Federal Bureau of Investigation report contained in the record indicates that the fingerprints provided by the applicant related to a Honduran national who was deported from the United States in 1989. Photographs in the alien file relating to the Honduran national closely resemble the applicant's photographs. Based on these discrepancies, it is also concluded that the applicant has failed to provide sufficient evidence to establish his nationality and identity. 8 C.F.R. § 244.2(a). Consequently, the director's decision to deny the application for this reason will also be affirmed.

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.