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U.S. Citizenship  
and Immigration  
Services

MI

FILE:



Office: TEXAS SERVICE CENTER

Date:

AUG 03 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a minor child, 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 his continuous physical presence in the United States during the requisite periods.

On appeal, the applicant's mother submits a statement and additional evidence.

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 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.

- (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 with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with Citizenship and Immigration Services (CIS), on September 15, 2003.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On January 6, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In addition, the

applicant was requested to submit photo identification, such as a State-issued identification card, or a national identity document from his country of origin bearing a photograph and/or fingerprint. It is noted that the director incorrectly asked for "evidence to show that you have resided in the United States prior to February 13, 2001." The applicant must establish his date of entry prior to February 13, 2001, and his continuous residence since that date. In response to the director's request, the applicant provided photocopies of the following documentation: pages of his El Salvadoran passport issued at San Miguel, El Salvador, on October 14, 1999; transcripts, correspondence, and report cards from ██████████ County Public Schools, Lawrenceville, Georgia, bearing dates between August 13, 2001 through May 2002; a ██████████ County Board of Education Student Progress Report dated November 19, 2003; a Georgia Department of Human Resources certificate of medical exam dated "8/7/01" and Certificate of Immunization dated "8/7/1;" and, receipt notices for his TPS and employment authorization applications dated September 15, 2003.

It is noted that the applicant previously had also submitted: his El Salvadoran birth certificate, with English translation; an invoice from ██████████ Hospital System, Inc., Atlanta, Georgia, for services rendered to the applicant on July 10, 2001;" and, copies of the Employment Authorization documents (EAD) for his mother ██████████ reflecting her TPS approval under Category A12, with validity from September 2, 2003 through March 9, 2005, and prior approvals of interim temporary TPS benefits under Category C19.

The director determined that the applicant had failed 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, and, therefore, denied the application on February 5, 2004. The director's decision noted that the applicant had specified on his TPS application that he entered the United States on June 1, 2001, and, therefore, did not meet all of the qualifications described in section 244 of the Act.

On appeal, the applicant's mother states that the applicant entered the United States on June 1, 2001, with a family member. She states that she does not have relatives in El Salvador who are willing or able to care for her son, and she strongly believes he needs to be here with his mother and siblings who were granted TPS. She asks that his application be reconsidered and approved. In support of the appeal, the applicant resubmits some of the documentation previously entered into the record, including a photocopy of his mother's EAD, reflecting her TPS approval under Category A12, with validity from September 2, 2003 through March 9, 2005. He also submits photocopies of his mother's Social Security card, and additional documentation from his school.

The dates by which nationals of El Salvador must establish continuous residence and continuous physical presence in the United States are a matter of statute and regulation. On the Form I-821, Application for Temporary Protected Status, and on the Form I-765, Application for Employment Authorization, the applicant indicated his date of entry into the United States as June 2001. The applicant's mother verified this date of entry on appeal. The record does not contain any evidence of the applicant's continuous residence and continuous physical presence during the specified dates. The applicant has not established that he has met the criteria 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.

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.