



U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: **AUG 16 2005**

[EAC 03 017 54261]

IN RE:

Applicant:



APPLICATION:

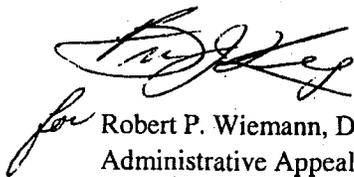
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 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 continuous residence and his continuous physical presence in the United States during the requisite periods.

On appeal, counsel provides a brief statement. In support of the appeal, counsel submits an affidavit from the applicant; copies of several previously submitted letters accompanied by copies of the driver's license of those individuals; and, one additional document. Counsel states that additional documentation will be submitted on or before September 27, 2003. To date, no additional documentation has been submitted. Therefore, the record must be considered complete.

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 issues raised by the director to be addressed in this proceeding are 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 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. A

subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 11, 2002.

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).

In a notice of intent to deny, dated May 27, 2003, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes.

The director found that the documentation submitted, in response to the notice of intent to deny, was not sufficient in establishing the applicant's continuous residence and his continuous physical presence in the United States during the requisite timeframes. The director denied the application on July 29, 2003.

On appeal, counsel states that the documentation he is submitting establishes that the applicant has resided in the United States continuously since February 13, 2001, and that he has been continuously physically present in the United States since March 9, 2001, to the date of the filing of his application. Counsel submits an undated letter from the owner of Bay Area Irrigation, Inc., who states that he has known the applicant since January 2001, and that the applicant has worked with him since May 2001. Counsel also submits several documents that were previously submitted. Counsel further submits an affidavit from the applicant which states, in pertinent part, that:

2. He has been residing continuously in the United States since December 2000 until the present.
3. Since his arrival in the United States he has not departed the United States.
4. When he first arrived to the United States he rented a room from his brother in an apartment in Glen Burnie, Maryland near the District Court of Maryland. Because he only lived there for three months, he does not recall the exact address. In March 2001 he began renting a room from [REDACTED] and resided there until December 2002. Towards the end 2002 he moved to [REDACTED] and began renting a room from [REDACTED]. He has been residing there ever since.
5. That when he first arrived in the United States he was employed by Alberto's Restaurant an Italian restaurant located in Crain Highway, Glen Burnie, Maryland. He worked there as a [REDACTED]. He was compensated \$300.00 per week and was always paid in cash.

6. [REDACTED] he worked at a Chinese Restaurant located in [sic] Crain Highway in Glen Burnie, Maryland as a dishwasher. He was compensated \$360.00 per week and was always paid in cash.
7. That since [REDACTED] has been working for Bay Area Irrigation, Inc., as a laborer.

The documentation provided on appeal is not sufficient in demonstrating the applicant's day-to-day living in the United States from the onset of the qualifying timeframes to the filing date of his TPS application. The employment letter from Bay Area Irrigation, Inc., without supporting documentary evidence such as earnings statements, employment records, or tax records is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, the applicant's TPS application shows that the applicant did not enter the United States until December 2001, almost eight months after the onset of the qualifying timeframes for establishing continuous residence and continuous physical presence.

The applicant has failed to provide sufficient credible evidence to establish 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 TPS on these grounds will be affirmed.

Beyond the decision of the director, the applicant has not established his eligibility to file for late registration. The initial registration period for TPS for El Salvadorians was from March 9, 2001 to September 9, 2002. The applicant filed his initial application for TPS on September 11, 2002; two days after the initial registration period had ended. 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). Therefore, the application must also be denied for this reason.

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.