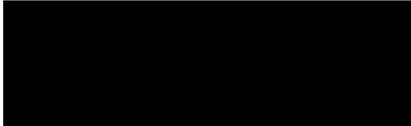




U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 203 51233]

Office: VERMONT SERVICE CENTER

Date: AUG 29 2005

IN RE: Applicant: [REDACTED]

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 on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is applying for 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 he had continuously resided in the United States since February 13, 2001 and been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant states he is responding to USCIS in a timely manner, that he has never abandoned his case for TPS benefits and that he has never committed any crimes either here or abroad. The applicant forwards additional documents for consideration.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity 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 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).

On November 13, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. In response, he provided the following documentation:

1. An affidavit dated December 1, 2003 from [REDACTED] indicating that he has known the applicant since September 2000 and that because [REDACTED] was illegal, there is no evidence under his name until he obtained his "Social Security" in 2002.
2. An affidavit dated December 1, 2003 from [REDACTED] indicating that she has known the applicant since he arrived in September 2000 in Maryland and came to live nearby.
3. A copy of pay slips for the applicant from the [REDACTED] in Bethesda, Maryland for the pay periods ending December 1, 2002, December 15, 2002 and December 29, 2002.
4. A copy of the applicant's Form 1040, U.S. Individual Income Tax Return, for 2002.
5. A copy of the applicant's Form W-2, Wage and Tax Statement, from the Congressional Country Club, Inc. in Bethesda, Maryland for 2002.
6. A copy of a pay slip for the applicant from [REDACTED] in Alexandria, Virginia for the pay period ending May 30, 2002.

7. A copy of an envelope mailed from the Maryland Motor Vehicle Administration in Glen Burnie, Maryland to the applicant at an address in Hyattsville, Maryland.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 23, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

8. A copy of pay slips for the applicant from the [REDACTED] in Bethesda, Maryland for the pay periods ending October 20, 2002, November 17, 2002 and January 12, 2003.
9. A copy of the applicant's Form 1040, U.S. Individual Income Tax Return, for 2003.
10. A copy of his Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return, for 2003.
11. A copy of his Form EL 101, Maryland Income Tax Declaration for Electronic Filing, for 2003.
12. A copy of his Form 502, Maryland Tax Return, for 2002.
13. A copy of a letter dated May 17, 2002 from [REDACTED] in Silver Spring, Maryland. Mr. [REDACTED] states that the applicant worked for the corporation from December 2000 until October 2001.
14. A copy of a money order from Gavilan Express in Washington, D.C. dated April 3, 2001 indicating the applicant sent money to a party in El Salvador.

The applicant resubmits a copy of his Form W-2, Wage and Tax Statement, from the [REDACTED] in Bethesda, Maryland for 2002 and copy of the applicant's Form 1040, U.S. Individual Income Tax Return, for 2002 for consideration.

Affidavits from acquaintances (Items #1 and #2) are not, by themselves, persuasive evidence of residence or physical presence. In addition, the employment letter from Mr. [REDACTED] at Item #13 has 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)(i). Specifically, the letter is not in affidavit form and is not signed and attested to by the employer under penalty of perjury. Additionally, Mr. [REDACTED] does not provide the address where the applicant resided during the period of his employment.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from on or before February 13, 2001, to April 3, 2001. He has, thereby, failed 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 will be affirmed.

An alien applying for TPS 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.