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FILE:



Office: VERMONT SERVICE CENTER

Date: JUL 29 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 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 that he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant asserts that he has resided in the United States since March of 1996.

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 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 March 6, 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. The applicant, in response, provided the following documentation:

1. A pay stub from California Diner for the period ending August 17, 2002, and bearing the applicant's name;
2. A State Farm automobile insurance notification dated January 9, 2002, and bearing the applicant's name and Patchogue, NY address; and
3. a billing statement from the Suffolk County Department of Health Services dated March 6, 2002, and bearing the applicants name as receiver.

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

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

4. A copy of a receipt from The Mattress Professionals Company dated January 5, 2001, and bearing the applicant's name and an address of [REDACTED]

5. A letter from [REDACTED] office in which he states that the applicant has been known to his office since June 29, 1999;
6. A receipt from [REDACTED] Express dated January 6, 2001, and bearing the applicant's name as sender; and
7. An affidavit from [REDACTED] in which she states that she has rented a room at [REDACTED] to the applicant since February 1, 2001.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States during the period from February 13, 2001, to May 4, 2001. The evidence submitted in response to the director's request for evidence does not establish residency during the 2001 requisite period. The evidence submitted by the applicant on appeal (Nos. 4, 5, and 6 above) is dated prior to the requisite period which commences February 13, 2001. The affidavit submitted (No. 7 above) has little evidentiary weight or probative value. Although the affiant stated that the applicant resided with her since February of 2001, there has been no independent documentary evidence provided to substantiate the claim. The applicant claims to have lived in the United States since March of 1996. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the contentions; however, no such evidence has been provided. 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 requirements described in 8 C.F.R. § 244.2(b).

The applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the director's decision, the evidence submitted by the applicant is insufficient to establish that he has been continuously physically present in the United States during the requisite period from March 9, 2001, to May 4, 2001. 8 C.F.R. § 244.2(c). For this additional reason, the application must be denied.

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.