

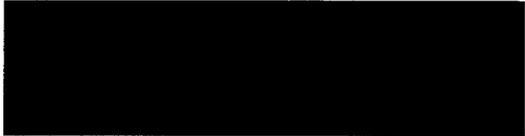
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U.S. Citizenship  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JUN 24 2005

[EAC 02 008 51805]

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 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, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits a brief statement.

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 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 § 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on September 17, 2001. In support of the application, counsel submitted:

1. A photocopy of an extract of his birth certificate, with English translation, issued in El Salvador on March 27, 2001;
2. An affidavit, dated September 5, 2001, from [REDACTED] stating that the applicant had lived with her at [REDACTED] Arlington, Virginia, since April 23, 2000; and,
3. An affidavit, dated September 10, 2001, from [REDACTED] stating that the applicant had lived with him at [REDACTED] Arlington, Virginia, since April 23, 2000.

On February 25, 2003, the director requested the applicant to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director determined that the applicant had failed to respond to the request, therefore, the director denied the application due to abandonment on April 18, 2003. However, the record reflects that the applicant had, on March 20, 2003, responded to the director's request by submitting:

4. A second affidavit from [REDACTED] dated March 18, 2003;
5. An affidavit, dated March 17, 2003, from [REDACTED] stating that she had known the applicant since December 1999; that she and the applicant reside together at [REDACTED] Arlington, Virginia; and, that she and the applicant have a child, [REDACTED] born in Fairfax, Virginia, on June 7, 2002; and,
6. A photocopy of an "Acknowledgement of Paternity" document, dated March 17, 2003, listing the applicant and [REDACTED] as the biological parents of [REDACTED]

On August 25, 2003, the applicant submitted a motion to reopen the denial of his application. In support of the motion, the applicant submitted:

7. An affidavit, dated August 25, 2003, from [REDACTED] stating that she had known the applicant since November 1, 1999, when she met him in El Salvador. She further states that the applicant lived with his sister [REDACTED] when he arrived in the United States; that the applicant took care of her [REDACTED] children from October 19, 2000 to on or about May 1, 2003; and that she and the applicant have a child together [REDACTED] Romero.

The director reopened the applicant's case. The director determined that the applicant had failed to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United

States during the requisite time periods. The director denied the application on these grounds on October 22, 2003.

The applicant has now filed an appeal of the director's October 22, 2003 decision. On appeal, the applicant states that he has resided in the United States since February 13, 2001, and has been physically present since March 9, 2001. No new evidence has been submitted in support of the applicant's appeal.

The applicant claims to have entered the United States on April 23, 2000. It is reasonable to expect that he would have a variety of objective, contemporaneous evidence to support his claim of having continuously resided in the United States since February 13, 2001, and been continuously physically present in the United States since March 9, 2001, through to the date of filing his TPS application on September 17, 2001. However, much of the documentation submitted by the applicant (Nos. 2, 3, 4, 5, and 7, above) consists of affidavits from his sister, brother-in-law, and the mother of his child. Such affidavits are not persuasive evidence of continuous residence and continuous physical presence. The only objective document submitted (No. 6) is dated well after the required dates.

It is concluded that the applicant has not submitted sufficient evidence 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, through to the date of filing his Form I-821 on September 17, 2001. He has, therefore, 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 temporary protected status will be affirmed.

No. 1, above establishes the applicant's nationality as an El Salvadoran. However, the applicant has not submitted a national identity document bearing his photograph and/or fingerprint, as required under the provisions of 8 C.F.R. § 299.9(a)(1)(ii) and (iii). Therefore, the application may also not be approved 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.