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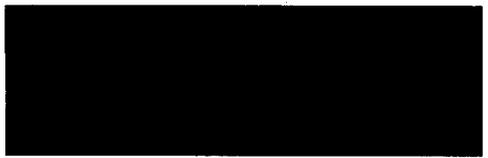


U.S. Citizenship and Immigration Services

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JUN 24 2005



FILE: [REDACTED] [EAC 01 177 52718]

Office: VERMONT SERVICE CENTER

Date:

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 (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 qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

On March 9, 2001, the Attorney General designated El Salvador (66 FR 14214) for Temporary Protected Status (TPS). 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.

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.

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.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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).

In support of his initial TPS application, filed on April 12, 2001, the applicant submitted:

1. A photocopy of an extract of his El Salvadoran birth certificate; and,
2. A photocopy of an American Airlines boarding pass from Los Angeles, California, to Newark, New Jersey, issued to the applicant on February 12, 2000.

On April 23, 2002, and October 29, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the requests.

On May 3, 2003, the applicant was again requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted the following additional documentation:

3. An English translation of his El Salvadoran birth certificate;
4. A photocopy of the identification page from his El Salvadoran passport, issued in Long Island, New York, on July 5, 2001;
5. A photocopy of an American Airlines passenger receipt, dated February 12, 2000;
6. A photocopy of a New York State Department of Motor Vehicles customer receipt/interim identification card, dated December 21, 2001;
7. A photocopy of a Fleet Total Access check card, valid effective October 2002;
8. A letter, dated May 26, 2003, from [REDACTED] stating that the applicant rented an apartment in his home from February 13, 2000, to May 28, 2002; and,
9. A letter, dated May 18, 2003, stating that the applicant had been employed by [REDACTED] Italian Restaurant in Babylon, New York, since January 2001.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on June 25, 2003.

On appeal, the applicant requests that his case be reconsidered. In support of the appeal, the applicant resubmits photocopies of documentation previously provided. He also submits:

10. A letter, dated July 3, 2003, from [REDACTED] stating that the applicant had been employed at [REDACTED] Italian Restaurant in Babylon, New York, since January 2001.

The applicant claims to have continuously lived in the United States from February 13, 2000, to the date of filing his TPS application on April 12, 2001. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Nos. 1, 3, and 4, above, establish the applicant's identity and nationality. While Nos. 2 and 5 establish that he was physically present in the United States on February 12, 2000, Nos. 6 and 7 are dated well beyond the dates required to establish qualifying continuous residence and continuous physical presence. Nos. 9 and 10 have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, they are not in the form of affidavits and do not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any). Furthermore, they are not supported by any objective evidence, such as pay stubs and company employment records. Similarly, No. 8 has little weight or probative value as it is not supported by rent receipts or a lease agreement.

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements 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.

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.