



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: NOV 17 2005

[EAC 02 283 50852]

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, reopened, and denied again 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 initially denied the application on July 18, 2003, after determining that the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On March 1, 2004, the applicant filed an appeal from the denial decision.

The director rejected the appeal as untimely filed, but accepted it as a motion to reopen. The director denied the application again because the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States.

The applicant filed the current appeal on August 23, 2004. On appeal, the applicant submits a statement and additional evidence.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent

extensions of the TPS designation has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed his Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 5, 2002.

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 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 applicant indicated on his Form I-821 that he entered the United States without inspection near Brownsville, Texas, on December 31, 1999. In support of his application, the applicant submitted the following:

1. a photocopy of his Virginia Identification Card issued on March 4, 2000;
2. a photocopy of a generic rent receipt dated April 3, 2000;
3. photocopies of money transfer receipts dated November 2, 2001 and March 22, 2002, respectively;
4. a photocopy of a Verizon billing statement dated August 17, 2002; and,
5. a photocopy of a Washington Gas billing statement dated August 22, 2002.

On April 16, 2003, 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. In response, the applicant submitted the following:

6. a photocopy of an earnings statement from [REDACTED] Inc., for the pay period from March 15, 2003 to March 21, 2003; and,
7. photocopies of money transfer receipts dated: July 19, 2002; and, January 24, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on July 18, 2003.

The applicant filed an appeal from the denial decision on March 1, 2004. On appeal, the applicant did not submit any additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On August 2, 2004, the director rejected the applicant's appeal as untimely filed, but accepted it as a motion to reopen. The director denied the application again because the applicant failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant filed the current appeal on August 23, 2004. On appeal, the applicant reiterates his claim to have lived in the United States since December 1999. He submits the following additional evidence:

8. a letter dated August 18, 2004, from [REDACTED] Pastor of Iglesia Evangelica Misionera Apostoles y Profetas Efe. 2:20 in Hyattsville, Maryland, stating that the applicant has been a member of his congregation since February 1, 2001;
9. a photocopy of a cover sheet for the applicant's 1999 federal income tax from H and R Block in Washington, D.C., along with a cash receipt from H and R Block dated March 17, 2000; and,
10. a photocopy of a Pepco payment coupon with a due date of March 2, 2001.

The applicant's Virginia Identification Card (No. 1 above) and the generic rent receipt (No. 2 above) are dated prior to the requisite periods to establish continuous residence and continuous physical presence, and the earnings statement from [REDACTED] Inc., (No. 6 above) is dated after the requisite periods.

The letter from Pastor [REDACTED] (No. 8 above) 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)(v). Specifically, it is not in the form of an affidavit, and the pastor does not provide the address where the applicant resided during the period of his involvement with the church.

The applicant has not provided any evidence to establish his residence and physical presence in the United States between March 2, 2001 and November 2, 2001, or from November 2, 2001 to March 22, 2002. Further, he has not provided any evidence to establish his residence and physical presence from March 22, 2002 to July 19, 2002, or from August 22, 2002 to September 5, 2002, the filing date of his TPS application.

In view of the foregoing, it is concluded that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

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 residence and 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for temporary protected status has the burden of proving that he or

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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.