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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: OCT 17 2005

[WAC 01 235 51117]

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.

for 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 originally denied the application on January 14, 2004, because the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. The applicant appealed the director's decision on February 18, 2004. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on April 19, 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 alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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).

The record shows that the applicant filed his TPS application on May 22, 2001. In support of his application, the applicant submitted:

1. A copy of his El Salvadoran birth certificate with English translation.
2. Copies of generic rent receipts dated December 1, 2000, and January 1, 2001.

In a notice of intent to deny dated October 21, 2003, the applicant was requested to submit additional evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant resubmitted documents listed as Nos. 1 and 2 above. He also submitted:

3. A copy of his El Salvadoran identity card.

The director determined that the applicant had provided no new evidence to establish continuous residence and continuous physical presence during the requisite period and denied the application on January 14, 2004.

On motion, received on February 18, 2004, the applicant submitted:

4. An affidavit from [REDACTED] dated February 8, 2004, stating that he is the homeowner of [REDACTED] California, and that the applicant rented from him at that address from November 2000 until March 2002, when the applicant relocated to the Maryland area.

After a complete review of the record of proceeding, including the motion, the director determined that the handwritten receipts and the affidavit were insufficient to establish continuous residence and continuous physical presence during the requisite period. The director concluded that the grounds of denial have not been overcome and affirmed his decision to deny on April 19, 2004.

On appeal, the applicant asserts that he entered the United States in November 2000, and that his first employer, whom he worked for "five months before April of 2001," paid him in cash. He submits the following:

5. A Gigante Express receipt dated April 12, 2001.
6. A pay statement issued by R&G Builders, Inc. dated May 4, 2001, for salary earned during the period from April 22, 2001 to April 28, 2001.

The rent receipts (No. 2 above) are generic and were dated prior to the requisite period required to establish continuous residence. While Mr. [REDACTED] (No. 4 above) states that the applicant rented his home from November 2000 until March 2002, no documentary evidence, such as rent receipts, was furnished by the applicant to support this claim. The remaining evidence (Nos. 5 and 6 above) only establishes the applicant's continuous residence in the United States since April 2001 to the date of filing the application. The applicant claimed to have lived in the United States since November 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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 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.