



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 007 50046]

Office: VERMONT SERVICE CENTER

Date: OCT 25 2005

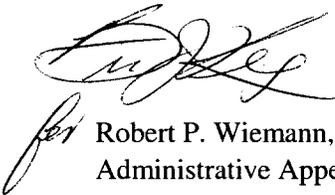
IN RE: Applicant: [REDACTED]

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.


for 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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant states that he wants to continue working and residing in the United States. The applicant also submits additional evidence and resubmits evidence previously provided in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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 as 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 section 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 physically present*, as used 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 term *continuously resided*, as used 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 entry on or prior to February 13, 2001, 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension 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 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 September 13, 2001. On October 30, 2002, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit proof of his nationality. The applicant, in response, provided:

1. A copy of a birth certificate, with no English translation.
2. Copies of receipts dated January 5, 2001, January 10, 2001 and February 5, 2001.
3. Copies of a State of Maine Identification Card Issued on January 3, 2002, a State of Maine, Driver's License issued on July 17, 2002, an Employment Authorization Card issued on November 5, 2001, and, a social security card.
4. Copies of a receipt from El Salvador dated March 21, 2001; another document from El Salvador, in Spanish, with no English translation dated March 21, 2001; and, a Bar Harbor Banking and Trust Company receipt dated January 11, 2002.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant states that he has had his card since November 5, 2001 and wants to continue residing and working in the United States. The applicant submits statements from [REDACTED] and copies of receipts dated March 1, 2001, April 1, 2001 and May 1, 2001. The applicant also resubmits evidence previously provided.

Two of the receipts are in Spanish with no English translation. Any document containing foreign language submitted to the CIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3). The remaining evidence provided in response to the notice is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence.

[REDACTED] states that she first met the applicant in December 2000. According to [REDACTED], the applicant continuously inquired about work and the company began employing the applicant from late August 2001 to 2002. This statement 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)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties of employment.

[REDACTED] Milbridge, Maine states that she has known the applicant since May 2000. According to [REDACTED] the applicant lived with some of her workers at a compound that she owns and she has seen the applicant on a regular basis since May 2000. [REDACTED] states that she has known the applicant since February 2001. [REDACTED] states that her family has known the applicant for about three years. [REDACTED] states that the applicant has been coming to her place of employment to shop and cash checks since January 2001. However, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

[REDACTED] owner and operator of [REDACTED] states that she has known the applicant since he rented a room from her from March 2001 to May 2001. The hand-written rent receipts support this claim. Similarly, Ms. [REDACTED] and [REDACTED] respectively at the Bar Harbor Banking and Trust Company, [REDACTED] Maine state that the applicant has conducted business at their bank since January 2002. However, these statements cannot establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. It is noted that the applicant did provide a copy of her birth certificate with English translation on appeal. Therefore, the applicant has established her nationality

The applicant, however, has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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 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.