



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
[EAC 02 271 51888]

Office: VERMONT SERVICE CENTER

Date:

OCT 31 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:

[REDACTED]

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

On appeal, counsel for 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 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.

- (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 have been granted with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on August 23, 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).

With his initial application, the applicant submitted photocopies of: his El Salvadoran birth certificate, with English translation; and, the sworn affidavit dated August 2, 2002, of [REDACTED] of Chesterfield, Virginia, attesting that the applicant became an "occupant/renter" in his home as of December 28, 2000.

On March 10, 2004, the applicant was requested to submit evidence establishing his nationality. He was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director advised the applicant of the regulatory requirements at 8 C.F.R. § 244.9(a) and (b), for evidence that may establish continuous residence and continuous physical presence in the United States for the purposes of TPS eligibility.

In response, through counsel, the applicant submitted photocopies of the following documentation: another copy of his birth certificate, with English translation; his El Salvadoran Motor Vehicle License issued on "09.03.1999;" his El Salvadoran Electoral Card, bearing a photograph and fingerprint, and an illegible date of issuance; and, another copy of the affidavit of [REDACTED] of Chesterfield, Virginia.

The director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and, therefore, denied the application on May 12, 2004.

On appeal, counsel asserts that the applicant entered the United States in December 2000, and states that because he lived with a friend who had already established a residence including telephone, apartment, and electricity, the applicant does not have evidence for that time period that would indicate his name, address and dates. Counsel asserts that the additional affidavits and evidence submitted on appeal will establish the applicant's continuous residence and continuous physical presence. In support of the appeal, counsel submits additional documentation consisting of:

1. A notarized statement dated June 3, 2004, from [REDACTED] owner of [REDACTED] Stanardsville, Virginia, stating that the applicant began working for him as a dishwasher in December 2000, and attesting to his good moral character and continuous residence in the United States;
2. A notarized statement dated June 3, 2004, [REDACTED] owner and operator of [REDACTED] Hanover, Virginia, stating that the applicant began working for him the previous year, although he had met the applicant in January 2001, and attesting to the applicant's good moral character and continuous residence in the United States, and that the applicant sends most of his earnings to El Salvador to support his family;
3. Western Union money transfer receipts dated June 19, 2002 and August 25, 2002;
4. A Bank of America account statement, indicating balances as of December 13, 2002 through March 13, 2003, and addressed to the applicant at the Chesterfield, Virginia address;
5. A Bank of America deposit slip dated October 4, 2002; and,
6. A State of Virginia Driver's License issued on August 6, 2003.

Counsel asserts that the notarized statements, identified above at Numbers 1 and 2, are sufficient to establish the applicant's continuous residence and continuous physical presence in the United States during the initial portion of the requisite periods. Although counsel refers to the June 3, 2004, statements of [REDACTED] and [REDACTED] submitted on appeal, as "affidavits," these letters are notarized but are not in affidavit form and do not attest to the facts under penalty of perjury. Further, the statements are insufficient for verifying employment during the specified timeframes, as the letters do not conform to the regulatory requirements for a letter verifying employment as designated under 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). The remainder of the evidence of

record is dated as of June 2002 and later. The applicant claims to have lived in the United States since December 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these notarized statements; however, no such evidence has been provided. 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 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.

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.