

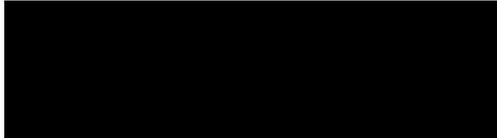
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 02 283 52536]

Office: Vermont Service Center

Date:

SEP 30 2005

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.

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 denied the application because the applicant failed to establish his qualifying continuous residence in the United States during the requisite period.

On appeal, the applicant submits a statement and documentation in support of his eligibility for TPS.

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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of 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).

On May 20, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001. The director determined that the applicant did not respond to his request and denied the application on July 31, 2003.

On August 30, 2003, the applicant filed an appeal to the director's decision to deny the application. On appeal, the applicant states that he did not receive the director's May 20, 2003 request until July 2003. The applicant also submits the following documentation along with his appeal: copies of a receipt notice from the Service dated December 31, 2002, regarding his application for employment authorization; a letter dated July 24, 2003, from [REDACTED] who stated that the applicant has been a customer of INCA Express since 2000; a copy of an employment letter dated August 19, 2002, from [REDACTED] who stated that he had known the applicant since April 25, 2001; a copy of an affidavit dated August 27, 2000, from Mr. [REDACTED] who stated that he has known the applicant since January 2000; a copy of an affidavit dated September 3, 2002, from [REDACTED] who stated that he has known the applicant since January 2001; copies of money transfer receipts from INCA Express, dated April 18, 2001, August 27, 2001, May 20, 2002, July 8, 2002, July 22, 2002, August 26, 2002, September 7, 2002, and September 21, 2002; and a copy of a receipt from Gigante Express dated August 19, 2002.

It is noted that on September 2, 2003, the director sent a subsequent decision to the applicant denying the application. The director stated in this decision that a response to the director's May 20, 2003 request had been received and reviewed. The director determined that the applicant had also failed to establish his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

It is noted that the record of proceedings contains a copy of the applicant's Georgia State Identification Card issued on December 4, 1999; however, this pre-dates the requisite time periods for TPS by over one year. In addition, the copies of receipts from INCA Express and Gigante Express post-date the beginning of the requisite time periods for El Salvadoran TPS by over one month. The statements from [REDACTED] regarding the applicant's transactions with INCA Express are not supported by corroborative evidence since 2000. The statement from [REDACTED] indicates that he has known the applicant since January 2000; however, he does not indicate whether such acquaintance was in the United States. The statement from Mr. [REDACTED] that the applicant has lived in the United States since January 2001 is not supported by corroborative evidence since that time. Furthermore, the statement from [REDACTED] regarding his acquaintance with the applicant post-dates the beginning of the requisite time periods for El Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. The applicant has not submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS 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 TPS 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.