



U.S. Citizenship
and Immigration
Services

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FILE:



Office: Vermont Service Center

Date: **JAN 23 2006**

[EAC 02 134 50694]

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 respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, the applicant asserts his eligibility for TPS and submits some evidence in support of his claim.

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 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.

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 3, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. On July 28, 2004, the director denied the application because he determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, the applicant states that he has been physically present in the United States since December 2000; however, he does not have any employment records because he was paid in cash. The applicant also submits the following documentation along with his appeal:

- 1) An affidavit dated August 16, 2004, from Mr. [REDACTED] who state that the applicant had rented a room from him at [REDACTED] in Herndon, Virginia from September 2, 2000 to August 15, 2003;
- 2) A copy of his Virginia Driver's License issued on February 14, 2003;
- 3) Copies of Western Union money transfer receipts dated December 14, 2000, January 25, 2001, February 5, 2001, June 5, 2001, June 18, 2002, and August 11, 2002; and,
- 4) A copy of Gigante Express money transfer receipts dated November 12, 2001.

A review of the evidence submitted on appeal reveals that Mr. [REDACTED] in No. 1 above, stated that the applicant had resided at [REDACTED] in Herndon, Virginia from September 2, 2000 to August 15, 2003. However, during the same time period that applicant had claimed he lived at two other address in Herndon, Virginia. In particular, the applicant claimed on his applications for temporary protected status and employment authorization signed on July 26, 2003, that he resided at [REDACTED] in Herndon, Virginia. It is also noted that the applicant claimed that he lived at [REDACTED] in Herndon, Virginia on his re-registration applications for TPS and employment authorization signed on August 10, 2002. It is also noted that according to the Western Union money transfer receipts dated February 5, 2001 and June 5, 2001, the applicant claimed he resided at 1219 Alabama Drive in Herndon, Virginia. Thus, questioning the credibility of Mr. [REDACTED] statements that the applicant had resided at [REDACTED] in Herndon, Virginia during the same period. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 382 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his residence in the United States as noted above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed 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 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.