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U.S. Citizenship
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Services

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FILE:

[REDACTED]

Office: Vermont Service Center

Date:

DEC 04 2007

[consolidated herein]
[EAC 01 195 51641]

[REDACTED]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

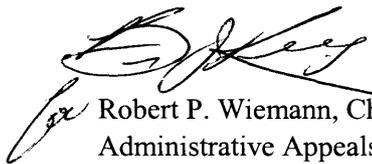
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, Chief
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 stated to be 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 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.

On appeal, counsel, on behalf of the applicant, submits evidence in support of the applicant's 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 March 9, 2009, 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 April 14, 2003, the applicant was requested to submit evidence to establish 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 June 24, 2003, the director denied the application due to abandonment because the record did not contain a response from the applicant.

On July 14, 2003, counsel filed a motion to reopen the application. The director approved the motion and rendered a decision. After a complete review of the record of proceedings, including evidence received in response to the director's April 14, 2003 request and the motion, the director determined that the applicant had failed to establish that he had met the continuous residence and continuous physical presence criteria. The director affirmed his previous decision and denied the application on March 24, 2004.

On April 4, 2004, counsel filed an appeal to the director's March 24, 2004 decision, which is now before the AAO. On appeal, counsel states that her office filed a motion to reopen on July 9, 2003, and on February 9, 2004, her office had received a notice from the Service regarding the receipt of the motion. Counsel further states that her office has not received an additional notice requesting additional evidence. Along with the appeal, counsel provides the following documentation in support of the applicant's eligibility for TPS: a copy of a Western Union money transfer receipt dated February 15, 1999; a copy of a Verizon billing statement covering a period of September 22, 2002 to October 21, 2002; copies of the applicant's cancelled checks dated September 13, 2002, October 1, 2002, October 5, 2002, November 11, 2002, November 22, 2002, December 1, 2002, and December 2, 2002; and a copy of an envelope addressed to the applicant in the United States bearing an illegible postmark. Counsel also provides copies of the previously submitted request to reopen the application dated July 9, 2003.

The single Western Union money transfer receipt pre-dates the requisite time periods for El Salvadoran TPS. The Verizon billing statement and cancelled checks post-date the beginning of the qualifying periods for continuous residence and continuous physical presence. The copy of the envelope does not bear a legible postmark; therefore, is of little evidentiary value. It is further noted that the applicant already provided copies of the above evidence along with his application for TPS, in response to the director's April 14, 2003 request, and with the previously filed motion to reopen. On all occasions, the director had already considered this documentation. The record of proceedings does not contain any new evidence in support of the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The evidence contained in the record of proceedings is not sufficient to establish that the applicant 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.

It is also noted that the applicant was ordered removed from the United States on October 29, 1997, by an Immigration Judge in Harlingen, Texas under file [REDACTED]. The applicant departed the United States to El Salvador on December 13, 1997.

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.