



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 05 2007

[EAC 02 199 50675]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 claims to be a 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 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.

On appeal the applicant states that he is submitting additional evidence of his presence and residence prior to February 13, 2001.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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 February 9, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant did not respond and the application was denied for abandonment. On appeal the AAO remanded the application to the director, Vermont Service Center, to issue a decision that stated a specific reason for the denial. On February 6, 2006, the director, Vermont Service Center, denied the application because the applicant had failed to establish residence prior to February 13, 2001, and continuous presence from March 9, 2001.

The applicant subsequently appealed and submits additional evidence in support of his eligibility.

The record contains the following documentation submitted by the applicant:

1. A letter, signed by [REDACTED], dated May 19, 2004, stating that the affiant has known the applicant since August 1999, and that the applicant has been living in the United States since before 1999.

2. A letter, signed by [REDACTED] dated May 19, 2004, stating that the affiant has known the applicant since August 1999, and that the applicant has been living in the United States since before 1999.
3. A 43 page print out of a Medical Record from Massachusetts General Hospital, printed on February 16, 2003, and bearing dated entries throughout 2002, 2003, and one entry in July 2, 2000, for a radiology appointment.
4. Copy of a bill from Massachusetts General Hospital for an appointment on July 2, 2000.
5. A court disposition for East Boston District Court, dated August 21, 2001, for an offense of drug distribution and drug distribution near a school/park on August 20, 2001.
6. Account statement from East Boston Neighborhood Health Center, dated November 25, 2002, and showing periodic activity from July 14, 2001, through to the date of the statement.
7. Handwritten letter from [REDACTED], President of [REDACTED], stating that the applicant has been employed by the affiant since January 2001.

Upon review of the record the AAO concurs with the director's finding and the decision will be affirmed. The evidence submitted by the applicant is not sufficiently probative to establish residence since prior to February 13, 2001.

The employment affidavit from [REDACTED] 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, does not explain how she came to know the applicant, what his duties were, where her business is located, the nature of the business' operations or applicant's duties, or provide any other verifiable information. For this reason the affidavit is of little probative value.

The letters submitted by [REDACTED] and [REDACTED] are uniform in nature, and lack sufficient detail to carry the applicant's burden alone. Affidavits are not a source of primary evidence, and these do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i).

In this case the medical records submitted, when viewed in a light most favorable to the applicant, suggest that he was present in the United States on July 2, 2000, for a radiology appointment at Massachusetts General Hospital. However, this is not sufficient to establish that the applicant was a resident of the United States prior to February 13, 2001. Aside from the secondary affidavit evidence the remaining documentation submitted by the applicant pertains to dates after February 13, 2001. Thus the body of evidence submitted to support the period at issue is not extensive. The generic nature of the evidence is only marginally probative of the applicant's presence during the required time, and is thus not persuasive that the applicant had established a residence prior February 13, 2001.

The applicant has not submitted sufficiently probative evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from prior to February 13, 2001, to March 9, 2001. He has, thereby, 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.

In addition, the AAO would note that the applicant is inadmissible under Section 212(a)(2)(A)(i)(II) of the Act, for conviction of a drug related offense. The record indicates that the applicant was convicted of drug distribution offense on September 6, 2001, a class D misdemeanor under the Massachusetts Code Sec. 32C(a). There is no waiver available to TPS applicant who is inadmissible under Section 212(a)(2)(A)(i)(II) of the Act. 8 C.F.R. § 244.3(c)(1).

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.