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Office: Vermont Service Center

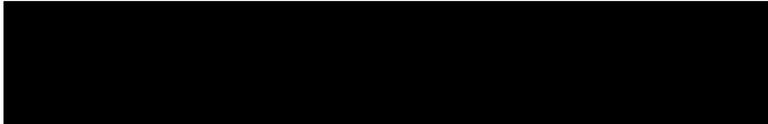
Date:

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[EAC 01 200 54749]

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), 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 qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant also failed to submit an identity document.

On appeal, the applicant asserts his eligibility for TPS and submits 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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 by the Secretary of the Department of Homeland Security, with validity 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).

The director denied the application on June 21, 2002, due to abandonment because it was determined that the applicant failed to appear for his required fingerprint appointment. On February 24, 2003, the applicant filed a motion to reopen the decision. The director reopened the decision and on September 28, 2005, the director requested the applicant to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also requested the applicant to submit a copy of his identity document.

In response, the applicant submitted the following:

1. A church letter dated October 19, 2005, from [REDACTED], who stated that the applicant was an active member of his church and that the applicant had stated that he had been in the United States since 2001;
2. Copies of two hand-written receipts dated February 1, 2001, and April 1, 2001, and;
3. A copy of an employment letter dated March 2001, from [REDACTED] Director of Manufacturing & TQM, IGS Store Fixtures, Inc., who stated that [REDACTED] had worked for him since September 26, 2000.

A review of the record also reveals that the applicant also submitted the following documentation:

4. Copies of his El Salvadoran birth certificate, with English translation, for Jose [REDACTED] and;
5. A copy of a hand-written letter dated March 15, 2001, from [REDACTED], who stated that she had known the applicant for two years.

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. The director also denied the application because the applicant failed to provide copies of an identity document.

On appeal, the applicant states that he entered the United States in 1999 and he did not have any documents at that time. The applicant also submits the following additional documentation in support of his appeal:

6. A copy of a notice from the CIS dated December 23, 2005;
7. A copy of a receipt dated July 3, 2001, from RadioShack;
8. A copy of an identity card from Massachusetts General Hospital for [REDACTED];
9. A copy of the birth certificate for his daughter, [REDACTED] born on June 6, 2005, and;
10. A copy of the identification page from his El Salvadoran passport issued on January 11, 2006.

The employment letter as detailed in No. 3 above, from [REDACTED] does not have any evidentiary weight or probative value as it does not refer to the applicant's name as reflected on his TPS application. Furthermore, a review of the record of proceedings reflects that the applicant submitted a copy of biographical page of his El Salvadoran passport bearing the name of [REDACTED]. However, the applicant failed to provide any credible evidence to establish the legal use of his claimed name of "[REDACTED]". Evidence of the use of two names may include, but is not limited to, a marriage certificate or court document registered with the proper civil authorities reflecting a name change for that individual.

In addition, the statement from [REDACTED] is not supported by corroborative evidence. The copies of the receipts provided by the applicant are not supported by any other credible evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. The applicant claims to have lived in the United States since 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence in support of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods for TPS. 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 physical presence requirements described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application 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 met this burden.

ORDER: The appeal is dismissed.