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U.S. Department of Homeland Security  
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Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



FILE:



Office: Vermont Service Center

Date:

**APR 08 2004**

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 he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant asserted his claim of eligibility for TPS and submitted 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 who is a national of a foreign state is eligible for temporary protected status 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 under section 244.3;
- (e) is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) registers for TPS during the initial registration period, or
  - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
    - (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 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. 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, 2005, 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).

Along with his application for TPS, the applicant submitted the following documentation:

1. Copies of the biographical pages of his Salvadoran passport.
2. A copy of his birth certificate in Spanish along with an English translation.
3. An affidavit dated March 12, 2001, from an acquaintance, Mr. Juan A. Climaco, who testified to the applicant's residence in the United States since August 1999.
4. A copy of a prescription written in East Boston, Massachusetts, on November 14, 2000 for Mr. Jose M. Villanueva with a birth date of April 25, 1975.

On March 27, 2002, the applicant was requested to submit evidence establishing his residence since February 13, 2001 in the United States. The applicant, in response, provided the following documentation:

5. An affidavit dated April 9, 2002, from an acquaintance, Mr. Ricardo Brenes, who testified to the applicant's residence in the United States since 1999.
6. An affidavit dated April 9, 2002, again from Mr. Juan A. Climaco, who testified to the applicant's residence in the United States since 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 1, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

7. A copy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, reflecting the applicant's 2001 income from Belmont Landscape.
8. Copies of the applicant's IRS Federal Income Tax Form 1040EZ for the year 2001.
9. A copy of the applicant's 2001 Massachusetts individual income tax return summary statement.

On appeal, the applicant stated that the doctor's note bearing the name of Jose M. Villanueva detailed in No. 4 was wrongly submitted as it did not belong to him. The statements in Nos. 3, 5, and 6 above, regarding the applicant's claimed residence in the United States, are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence.

Further, the affiants to the documents in Nos. 3, 5, and 6 testified that the applicant had resided in the United States since 1999. However, on the application for TPS, the applicant had stated that he did not enter the United States until August 2000. In addition, the fact that the applicant submitted a letter with his name on it from a physician, and now states that it was not his letter, leads CIS to further find the applicant's assertions as implausible.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies.

The tax documentation detailed in Nos. 7, 8, and 9 above indicate that the applicant was in the United States during the year 2001. However, the burden is on the applicant to establish his residence since February 13, 2001. The applicant has failed to provide any documentation such as pay-stubs or other contemporaneous evidence that would establish the dates of his residence in the United States.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in

8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status 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.