



U.S. Citizenship  
and Immigration  
Services

WA-1

[Redacted]

FILE: [Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 23 2004

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.

*[Signature]*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

For information only, this document is not intended to be used for any other purpose.

OPTIONAL FORM NO. 10  
MAY 2002 EDITION  
GSA FPMR (41 CFR) 101-11.6

**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 determined that the applicant failed to submit evidence 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 the application. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant has resided in the United States since December 15, 2000. Counsel submits additional evidence in support of the applicant's claim to eligibility for TPS.

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 as designated by the Attorney General is eligible for temporary protected status 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 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 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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).

The record reflects that the applicant submitted his application for TPS on November 13, 2001. In support of his application, the applicant submitted a November 5, 2001 affidavit from [REDACTED] who stated that she has known the applicant since December 24, 2000.

On December 16, 2002, the applicant was requested to submit evidence to establish that he had continuously resided in the United States since February 13, 2001, and that he had been physically present in the United States since March 9, 2001. In response, the applicant submitted a February 4, 2003 statement from [REDACTED] who stated he had "been familiar" with the applicant since November 2000.

The director concluded that the applicant had failed to establish his qualifying continuous residence and physical presence in the United States during the requisite periods. On March 27, 2003, the director denied the application. On appeal, counsel states that the applicant has resided in the United States since December 15, 2000, and that the applicant can only provide affidavits from acquaintances to support his claim. Counsel asserts that he is aware that such affidavits have proven to be acceptable evidence in other cases.

The applicant submits a new affidavit, dated April 8, 2003, from [REDACTED] who states that the applicant has worked for him since January 2001, but that he met the applicant when he came to his company in December 2000 to look for a job. 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 has resided during the period of his employment. Most importantly, information in the April 8, 2003 affidavit contradicts Mr. Montoni's previous statement on February 4, 2003, in which he stated that he had "been familiar" with the applicant since November 2000.

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 discrepancy in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The statements from [REDACTED] regarding the applicant's claimed continuous residence in the United States before February 11, 2001, 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 are not, by themselves, persuasive evidence of residence or presence. The applicant has, therefore, failed to establish that he has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The burden of proof is upon the applicant to establish 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.