

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

Handwritten signature

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 29 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.

Handwritten signature of Robert P. Wiemann

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 determined that the applicant had failed to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his physical presence in the United States since March 9, 2001, and that he and [REDACTED] are one and the same person. The director, therefore, denied the application.

On appeal, the applicant reiterates his claim of eligibility for TPS and states that he has resided in the United States since August 2000. The applicant submits additional 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 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 (the Secretary), 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 initial application for TPS on September 20, 2001. The applicant stated on the Form I-821, application for TPS, that he had also used the name [REDACTED]. He stated his Social Security number as [REDACTED]. In support of his claim, the applicant submitted two pay statements from Paramount Plating Company, in Linden, New Jersey, reflecting wages paid under Social Security number [REDACTED] at [REDACTED] on January 6, 2001, and on April 25, 2001.

On December 3, 2002, the applicant was requested to submit evidence establishing 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. The December 3, 2002 notice also informed the applicant that there were discrepancies in the evidence he had submitted. Specifically, the applicant was informed that the pay statements he submitted were in a name other than his own, and a Salvadoran document he had provided, had been issued in Yucuaiquin, on April 17, 2001, which contradicted his claim on the Form I-821, Application for Temporary Protected Status, that he entered the United States on August 8, 2000. In response, the applicant stated that he has continuously resided in the United States since August 2000, without interruption. He stated that the Salvadoran document he submitted with his TPS application is a processing fee receipt issued to his parents at the time they obtained a certified copy of his birth certificate. The applicant also stated that he had used the fictitious name, [REDACTED] to work during the period from October 2000 to March 2002, before he had received authorization to accept employment. In support of his claim, the applicant submitted an affidavit from his brother [REDACTED] who stated that the applicant had continuously resided in the United States since August 2000, and that he had used the name [REDACTED] to obtain employment.

The director concluded that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and physical presence in the United States during the requisite periods, and that he had not submitted sufficient evidence to establish that he and [REDACTED] were one and the same person. On May 12, 2003, the director denied the application.

On appeal, counsel for the applicant states that the applicant has continuously resided in the United States since August 2000. He asserts that the director did not give proper weight to the evidence presented to him. Counsel also states that the affidavits submitted by the applicant in support of his TPS application were properly executed and the affiants had solemnly sworn to the truth of their statements. However, affidavits are not, by themselves, persuasive evidence of an alien's continuous residence or physical presence in the United States. The statement from the applicant's brother regarding the applicant's claimed presence in the United States before February 11, 2001, is not supported by any corroborative evidence. The applicant claims to have lived in the United States since August 8, 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence in his own name to support these assertions; however, no such evidence has been provided.

Counsel also states that the applicant had requested his employer to provide a letter stating that he is known by the company under both his real name and his fictitious name; however, the company declined to issue such a statement. The applicant stated on his initial TPS application that his Social Security number was [REDACTED] and he submitted two pay statements in the name [REDACTED] for wages paid to that individual under Social Security number [REDACTED]. It is noted that the applicant indicated on two subsequent TPS applications that his Social Security number is [REDACTED] and he provided a copy of his Social Security card, which bears that number.

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 in the documentation he submitted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect, and it must be concluded that the applicant has failed to establish that he has met the continuous 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.

It is noted that counsel furnished a copy of a Form I-862, Notice to Appear, issued to the applicant in Phoenix, Arizona, on August 9, 2000, which indicates that another record, [REDACTED] was created for the applicant. It is further noted that the Notice to Appear indicates that the applicant stated that he was a native of Guatemala, and a citizen of Guatemala. Citizens and nationals of Guatemala are not eligible for TPS because Guatemala is not a foreign state designated by the Secretary and eligible for the granting of TPS under section 244 of the Act. As the appeal will be dismissed on the grounds discussed above, this issue need not be examined further.

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.