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U.S. Department of Homeland Security  
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**U.S. Citizenship  
and Immigration  
Services**



*MI*

FILE:



Office: VERMONT SERVICE CENTER

Date:

NOV 03 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:



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 determined that the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts 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 alien who is a national of a foreign state 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 § 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, 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).

The record reflects that the applicant filed his TPS application on July 2, 2002. Along with his application, the applicant submitted the following documentation:

1. A copy of a certification from the Head of Civil Registry in El Salvador, testifying that the applicant was legitimized by his Salvadoran father.
2. A copy of his Salvadoran identification card.
3. A copy of his Salvadoran passport issued on May 16, 2002 in Manhattan, New York.
4. A church letter dated May 24, 2002, from [REDACTED] Pastor and Secretary of the Christian Church Mount Sinai in Brooklyn, New York, stating that the applicant had visited their church since November 2000.

On March 20, 2003, the applicant was requested to submit evidence establishing his residence in the United States since February 13, 2001, and physical presence since March 9, 2001. The applicant was also requested to submit evidence that he had re-registered for TPS. The applicant, in response, provided the following documentation:

5. An affidavit dated April 10, 2003, from [REDACTED] who stated that the applicant had lived in his house prior to February 2001.

6. A copy of his medical examination dated December 26, 2002, from the Fort Greene Chest Clinic in Brooklyn, New York.
7. Copies of his pay-stubs from Empire Silver Company, Inc., and Interdynamics, Inc., reflecting pay dates of October 25, 2002, January 24, 2003, and March 28, 2003.
8. A letter dated September 25, 2002, from GreenPoint Bank.
9. A copy of his course registration from the Kingsborough Community College reflecting payment for his registered courses on June 19, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 13, 2003.

On appeal, the applicant, through counsel, submits an affidavit stating that he entered the United States without inspection in November 2000, and immediately went to reside with his brother, [REDACTED] at his current address in Brooklyn, New York. However, [REDACTED] in his affidavit detailed in No. 5 above, stated that the applicant had lived with him in Hewlett, New York, prior to February 2001. The applicant has not submitted any objective evidence to explain or justify the discrepancy in his residences since his entry into the United States.

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).

Further, the statements from [REDACTED] regarding the applicant's claimed presence in the United States before February 13, 2001, are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions.

The letter from Reverend [REDACTED] and Sister [REDACTED] as detailed in No. 4 above, 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his physical presence in the United States since March 9, 2001. He has, therefore, 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 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.