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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



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FILE:

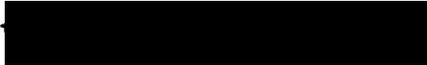


Office: VERMONT SERVICE CENTER

Date: NOV 03 2004

IN RE:

Applicant:



APPLICATION:

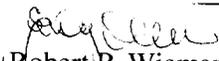
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period.

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.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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, 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 shows that the applicant filed his TPS application on July 8, 2002. On April 14, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing the application. The director determined that none of the evidence presented by the applicant was in his name; therefore, the applicant was requested to submit evidence that he and [REDACTED] are one and the same person. The applicant, in response, provided a letter stating that out of fear of being deported, he assumed the name of [REDACTED] in order to work. The applicant also provided copies of his employment authorization cards, a Maryland Identification card issued on May 5, 2003, and a hand-written index card indicating he worked for Wheaton Lawn Service through May 3, 2002, all in his name.

The director further determined that the applicant failed to establish that he and [REDACTED] are one and the same person. He further determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant provides additional evidence in an attempt to establish that he and [REDACTED] are one and the same and that he, therefore, has established continuous residence and continuous physical presence during the qualifying period. The applicant submits a letter from [REDACTED] dated July 23, 2003, in which he states that the applicant worked for him under the name of [REDACTED] for approximately one year. The applicant also provides copies of a 2000 Form W-4, Employee's Withholding Allowance Certificate, as well as paychecks. In addition, the applicant submits additional pay stubs in the name of [REDACTED]

In determining if an alien has used an alias, the most persuasive evidence is a document issued in the assumed name which identifies the applicant by photograph, fingerprint, or detailed physical description. However, other evidence, such as affidavits by a person or persons other than the applicant, made under oath, which identify the affiant by name and address and state the affiant's relationship to the applicant and the basis of the affiant's knowledge of the applicant's use of the assumed name. When such affidavits are accompanied by a photograph which has been identified by the affiant as the individual known to the affiant under the assumed name in question, it will carry greater weight.

In his statement, [REDACTED] fails to specify the applicant's employment dates, or the name of the applicant's employer. Further he does not provide the applicant's address at the time of employment. In addition, no contemporaneous evidence has been submitted in support of the statement from [REDACTED]. It should also be noted that even if the evidence in the name of [REDACTED] is accepted as true and correct, that evidence only establishes the applicant's presence in the United States in November and December 2000 and not again until September 9, 2001. Therefore, the applicant still would not establish qualifying continuous residence and continuous physical presence.

Furthermore, the applicant had provided a pay stub dated February 9, 2001, and medical statements dated November 13, 2000, November 27, 2000, and December 5, 2000, all in the name of [REDACTED] in Kansas City, Missouri. There is no other evidence in the record to indicate the applicant ever resided in Kansas City or worked there or used the name of [REDACTED]. Therefore, this evidence is not credible. 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 establish that he and [REDACTED] are one and the same person, and that he has met the criteria for residence and physical presence 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.