

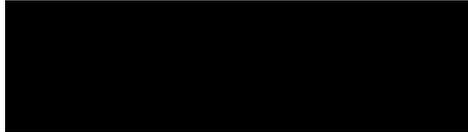
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U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services



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FILE:



Office: VERMONT SERVICE CENTER

Date:

NOV 03 2004

IN RE:

Applicant:



APPLICATION:

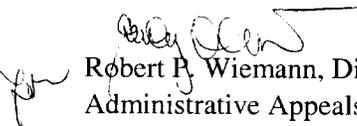
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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

On appeal, the applicant asserts that he entered the United States on December 12, 2000. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States 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).

On May 7, 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 filing of the application. The applicant, in response, provided a letter from [REDACTED] and a pay stub. [REDACTED] claims that she has known the applicant since February 2001. However, the statement is not supported by any corroborative evidence. Affidavits are not, by themselves, persuasive evidence of residence or physical presence.

The director also noted that the applicant submitted a pay stub to show that he was working for [REDACTED] in the year 2000; however, the pay stub has no date. The director, therefore, 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 and denied the application.

On appeal, the applicant states that he entered the United States on December 12, 2000 and has resided in this country since that date. According to the applicant, he applied for TPS and the denial of his application would cause him extreme hardship. The applicant claims that since he began living in the United States, [REDACTED] has supported him, and that he began working for Beechfield Landscaping, Inc. and DPR, Inc. Golden Corral in August 2001. The applicant also submits statements from [REDACTED] and earnings statements in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period.

states that the applicant came to the United States in December 2000 and that he supported him until August 2001 when he began to work. According to that is why the applicant has no receipts showing his name before August 2001. claims that he met the applicant in January 2001 when he became his roommate at the home of and that he has seen him every day since they began to live together. asserts that he has known the applicant since "more or less the last days of February 2001." These statements 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 physical presence.

The applicant submits copies of earnings statements from Beechfield Landscaping, Inc. and DPR, Inc. Golden Corral reflecting employment during the period from August 15, 2001 through December 5, 2001, inclusive.

These earnings statements, however, appear to be not credible as they contain signs of alterations. Also the "year to date" earnings were obliterated, and they do not contain the name of the applicant.

It is noted that the "Earnings Statement ADP" were copied onto the same pages of the earnings statements from the two alleged employers. It is not clear whether the Earnings Statement ADP and the earnings statements from the two employers were, in fact, issued by the employers since the names of these employers are not listed on the Earnings Statements ADP. Therefore, these documents cannot establish the applicant's continuous residence since February 13, 2001, and his continuous physical presence from March 9, 2001 to the date of filing the application.

The applicant filed his application on August 1, 2001. On May 30, 2003, he stated that he was working at in the year 2000. He submitted one pay stub to support his claim. The dates of this document, however, appear to be altered to reflect the pay period from December 2, 2000 to December 8, 2000. This document offers conflicting information since the applicant claims on his TPS application that he entered the United States on December 12, 2000.

The applicant now claims, on appeal, that in August 2001 he started working for Beechfield Landscaping, Inc. and DPR, Inc. Golden Corral. An applicant raises questions of credibility when asserting a substantially revised claim to eligibility on appeal. The applicant did not claim employment with Beechfield Landscaping, Inc. and DPR, Inc. Golden Corral when he filed his application on August 1, 2001, and when he submitted evidence in response to the director's request for additional evidence on May 7, 2003. Only after the application was denied did the applicant claim employment in August 2001.

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 documentation furnished by the applicant appears not to be credible. Further, the applicant has not submitted any objective evidence to explain or justify the discrepancies in the evidence presented. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has not submitted sufficient credible evidence to establish 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.