

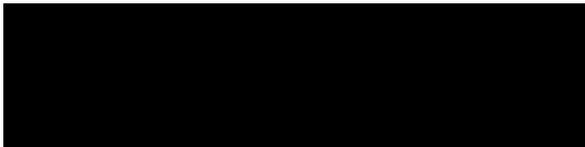
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U.S. Citizenship
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Services



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FILE:



Office: VERMONT SERVICE CENTER

Date: NOV 04 2014

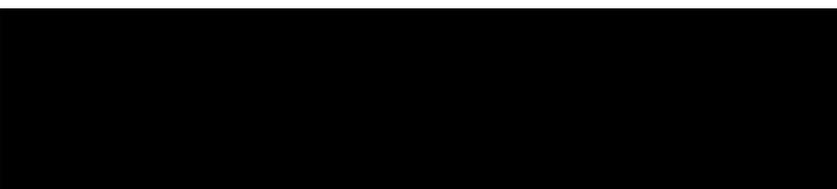
IN RE:

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 denied the application because 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.

On appeal, the applicant asserts his claim of eligibility for TPS and submits 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 shows that the applicant filed his TPS application on April 6, 2002. Along with his application, the applicant submitted the following documentation:

1. Copies of his El Salvadoran birth certificate along with an English translation.
2. A copy of his El Salvadoran voter's registration card dated July 3, 1996.
3. Copies of his El Salvadoran school identification card dated July 30, 1996.
4. A copy of his student identification card from Huntington Park Bell - Gage Community Adult Schools, in Huntington Park, California, bearing the years 2000 and 2001.
5. An affidavit dated March 20, 2002, from an acquaintance, [REDACTED] who stated that he has known the applicant since the end of the year 2000.
6. An employment letter dated March 26, 2002, from [REDACTED] owner of Frank's Time Out in Berlin, New Jersey, who stated that the applicant had been working for him since the first week in March 2001.
7. A copy of an envelope addressed to the applicant in New Jersey bearing a postmark of "March 2002."

On November 7, 2002, the applicant was requested to submit additional evidence establishing his residence in the United States since February 13, 2001, and physical presence from March 9, 2001, to the date of filing his application on April 6, 2002. The applicant, in response, provided the following documentation:

8. An employment letter dated December 9, 2002, from [REDACTED] [REDACTED] Manager and Assistant Manager, respectfully, of City Food in Huntington Park, California, who stated that the applicant worked for them from January 7, 2001 to July 14, 2001.
9. An affidavit dated December 21, 2002, from an acquaintance, [REDACTED] who stated that he has known the applicant since December 25, 2000.
10. An affidavit dated December 21, 2002, from his brother, [REDACTED] who stated that the applicant arrived in the United States on December 25, 2000, and resided with him from that date until February 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 29, 2003. On appeal, the applicant reasserts his claim and submits the following documentation:

11. His check-stubs from his employer, City Foods, reflecting payments for pay periods ending May 13, 2001 through June 3, 2001.
12. Resubmitted copies of Nos. 8, 9, and 10 above.

The statements from the affiants in Nos. 5, 9, and 10 above, regarding the applicant's claimed presence and residence in the United States during the requisite time periods, 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; however, no corroborative evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Further, while the applicant furnished a copy of his student identification card from Huntington Park Bell-Gage Community Adult Schools (No. 4 above), he neglected to submit a transcript from the school to establish that he did, in fact, attend the adult school during the years 2000 and 2001.

The employment letters, as detailed in Nos. 6 and 8 above, have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in affidavit form, they are not attested to by the employers under penalty of perjury, and they do not provide the address or addresses where the applicant resided during the period of his employment.

It is worth noting that the statements from [REDACTED] as detailed in No. 6 above, indicate that the applicant had worked for him in Berlin, New Jersey, since the first week of March 2001. However, the statements from [REDACTED] as detailed in No. 8 above, indicate that the applicant worked for them in Huntington Park, California, from January 7, 2001 to July 14, 2001. Further, the affiants' statements, as detailed in Nos. 9 and 10 above, indicate that the applicant did not move to New Jersey until February 2002.

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. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his continuous 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.