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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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**M**

FILE: [REDACTED]  
[EAC 02 246 50874]

Office: VERMONT SERVICE CENTER

Date: **APR 07 2005**

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:



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.

A handwritten signature in black ink, appearing to read "R. 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 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, counsel for the applicant asserts that the director erred in her decision to deny the application. The applicant also provides 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 September 9, 2006, 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 19, 2002. On July 18, 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:

1. Copies of hand-written generic rent receipts dated April 2000, May 2000, June 2000, January 2001, February 2001, March 2001, May 1, 2002, June 1, 2002 and July 1, 2002.
2. A copy of a letter from AMCA Collection Agency dated November 19, 2001 for a charge incurred on August 16, 2000.
3. A copy of an envelope date-stamped June 10, 2002.
4. A copy of a statement from [REDACTED]

The director 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, counsel for the applicant states that the director erred in his decision to deny the applicant's TPS application. According to counsel: "The evidence of Mr. [REDACTED] physical presence residence in the United States is stronger than is typical of Salvadorans who entered the US illegally." Counsel asserts that it would be equitable and fair for the director to reverse her decision. The applicant also provides copies of envelopes date-stamped March 6, 2001 and March 13, 2001. As with the envelope discussed above, these documents indicate the applicant was present in the United States on March 6, 2001 and March 13, 2001. However, the envelopes do not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period.

Counsel also asserts that the review of the applicant's documents was done erroneously, or that the reviewer lacked full data, or that earlier submissions were not properly included in his file. However, despite counsel's concern, this office's review of the record is in accord with the director's decision that the applicant has not established qualifying residence and physical presence.

The rent receipts 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. The letter from AMCA indicates the applicant was present in the United States on August 16, 2000 and on November 19, 2001. Similarly, the date-stamped envelope indicates the applicant was present in this country on June 10, 2002. However, none of these documents establish the applicant's continuous residence since February 13, 2002 and continuous physical presence from March 9, 2001 to the filing of the TPS application. In his letter, Mr. [REDACTED] states that the applicant has been in the United States since February 2001. Mr. [REDACTED] statement is also 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. Consequently, the applicant has failed to provide any evidence of his presence in the United States from March 2001 to November 19, 2001.

The applicant has failed to establish that he has met the criteria for continuous residence and continuous 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.