



U.S. Citizenship  
and Immigration  
Services

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MM

FILE:

[REDACTED]  
[EAC 02 244 50185]

OFFICE: VERMONT SERVICE CENTER

DATE: AUG 25 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.

for 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 had failed to submit sufficient evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel submits a statement.

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.

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 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 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 13, 2002. In support of his application, the applicant submitted:

- (1) A copy of an El Salvadoran identification card (Cedula) issued in El Salvador on October 26, 1995.
- (2) A copy of a residential lease agreement.

In a notice of intent to deny dated January 20, 2004, the applicant was requested to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted:

- (3) A copy of his daughter's birth certificate indicating birth in Rhode Island on June 17, 2002.
- (4) A letter of employment dated February 19, 2004, from [REDACTED] owner/manager of The Market Newport Gourmet, indicating that the applicant has been employed by The Market since October 2000, and that in November of 2001, the applicant switched his Social Security number.

The director determined that the evidence furnished was insufficient to establish that the applicant had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. She noted that the residential lease, previously furnished, appeared to be altered. The director, therefore, denied the application on March 24, 2004.

On appeal, counsel asserts that the evidence furnished clearly establishes that the applicant entered and began residing in the United States before February 13, 2001; therefore, he is eligible for TPS. He states that the applicant submitted a letter from his employer stating that he has been employed since October 2000, and that he also submitted a copy of his lease for an apartment in Newport, Rhode Island, dated January 1, 2001. Counsel further asserts that the director has either ignored this evidence or has failed without explanation to give proper weight to the evidence.

The record, however, shows that the director, in her decision, did acknowledge the evidence furnished by the applicant, and had also noted that the lease agreement appeared to have been altered. As noted by the director, the date on the lease agreement (No. 2 above) was altered to reflect the year "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 applicant has neither addressed nor submitted any objective evidence to explain or justify the discrepancy in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

Additionally, the employment letter from The Market 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)(i). Specifically, the letter is not in affidavit form and attested to by the employer under penalty of perjury; and the employer does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the periods(s) of layoff, if any, and the applicant's duties with the company. The applicant also could have submitted contemporaneous evidence, such as pay statements, to support this claim of employment; however, no such evidence has been provided.

The only other evidence furnished in an effort to establish eligibility is the June 17, 2002, birth certificate of the applicant's daughter. The applicant claimed to have lived in the United States since April 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application 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.