

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Identifying documents used to
prevent identity theft and protect
investors of personal property

MI

[REDACTED]

FILE:

[REDACTED]

[EAC 02 225 52584]

Office: VERMONT SERVICE CENTER

Date: AUG 26 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:

[REDACTED]

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 cursive script, appearing to read "Sindy" or similar, followed by a long horizontal flourish.

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 claims to be 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: 1) that he was a citizen or national of El Salvador; 2) that he continuously resided in the United States since February 13, 2001; and 3) that he had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 phrase 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.

The phrase 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted 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 first issue in this proceeding is whether the applicant is a citizen or national of El Salvador.

The applicant claims to be 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.

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The petitioner initially submitted a copy of an English translated birth certificate and a copy of an El Salvadoran birth certificate, number [REDACTED]

On August 20, 2003, the applicant was requested to submit evidence to show that he is a citizen or national of El Salvador. The applicant did not respond to the director's request.

The director determined that the applicant had failed to establish that he was a citizen or national of El Salvador and denied the application on March 10, 2004.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits a copy of the applicant's EAD card.

The applicant has provided insufficient evidence to establish that he is a citizen or national of El Salvador. The applicant submitted with his initial TPS application a copy of an English translated birth certificate and an El Salvadoran birth certificate written in Spanish. An English translation of a birth certificate alone does not establish citizenship or nationality. Although the record does contain a copy of a Spanish version of an El Salvadoran birth certificate, there is nothing in that document which identifies the applicant as the named person in the certificate. It is noted that the Spanish birth certificate appears to have been altered in that the child's name has been whited out. 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 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 apparent alteration of the document.

On appeal, the applicant failed to provide a copy of a photo identification or national identity documentation submitted to establish citizenship or nationality. 8 C.F.R. § 244.2(a)(1). Consequently, the director's conclusion that the applicant had failed to establish that he was a citizen or national of El Salvador will be affirmed.

The second issue in this proceeding is whether the applicant has submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following documentation with his TPS application:

1. A copy of a marriage certificate that shows that the applicant married [REDACTED] in the state of Virginia on December 5, 1997;
2. A copy of a birth certificate issued November 2, 1999 which indicates that the applicant is the father of [REDACTED] born September 7, 1999 in the Commonwealth of Virginia;
3. A copy of a criminal history record information request dated March 2, 2001 and bearing the applicant's name and Annandale, Virginia address;
4. Copies of income tax records dated March 2, 2001 and bearing the applicant's name;
5. A letter from the president of [REDACTED] in which he stated that the applicant had been employed by his company since September 16, 1998 and that he currently holds the position of mechanic;
6. A copy of a letter from [REDACTED] in which he stated that he has known the applicant since July of 1994; and,
7. A copy of a letter from [REDACTED] in which he stated that he met the applicant in 1994.

On August 20, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant did not respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 10, 2004.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits the following documentation for the first time:

8. A copy of tax records dated 1998 through 2001 and bearing the applicant's name and the name [REDACTED] as joint filers.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001. Joint tax records alone are insufficient to establish continuous residence and physical presence. The employment

letter submitted by the applicant [REDACTED] 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 correspondence is not in affidavit form and does not provide the address where the applicant resided during the period of his employment. The copy of the applicant's marriage certificate (No. 1 above) and son's birth certificate (No. 2 above) are dated prior to the requisite time period; and therefore, are not sufficient to establish the applicant's residence in the United States beginning February 13, 2001.

The applicant has not submitted sufficient evidence to support the statements made by [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States since 1994. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Further, the affiants have not demonstrated that their knowledge of the applicant's presence in the United States is independent of what the applicant told them about his entry into the United States. If not, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The applicant has 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 TPS will be affirmed.

An alien applying for TPS 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.