

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI



FILE:



[EAC 02 086 51004]

Office: VERMONT SERVICE CENTER

Date: FEB 02 2005

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.

Cinder N. Gomez
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An untimely appeal filed by the applicant was treated as a motion to reopen by the service center director, and the director again denied the application. The applicant appealed the director's decision on the motion, and it 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, the applicant asserts that the initial documentation filed with his TPS application reasonably established nationality, date of entry and presence in the United States.

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 6, 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 January 10, 2002. On August 29, 2002, 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 date of the application. The applicant, in response, provided a statement from [REDACTED]. According to [REDACTED] he has known the applicant since on or about February 8, 2001, and, to the best of his knowledge, the applicant has not left the United States since that date.

The director determined that the applicant had 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.

The appeal was filed late and the director accepted it as a motion to reopen. On motion, the applicant stated that he responded to the request for additional information on October 16, 2002. The applicant lists several documents that he states he provided. However, the record only establishes that one of the claimed documents was provided at that time, the letter from [REDACTED] which was discussed above. The other documents were dated and/or sworn to after the date of the decision, and those documents, statements from [REDACTED] and [REDACTED] will be discussed at this time.

states that he rented a room to the applicant from September 2000 to May 2001. However, Mr. offers no evidence in support of this statement. Furthermore, the applicant lists February 5, 2001, as his date of entry into the United States on his applications. Consequently, the statement from Mr. offers conflicting information and therefore lacks credibility. Similarly, Ms. states that she has known the applicant since February 11, 2001, and that he has not left the country since that date. Ms. however, also fails to provide any corroborative evidence in support of her claim. According to Mr. identified as Vice-President for , Locust Valley, New York, his company has employed the applicant since March 4, 2002. This statement 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 affiant does not provide the address where the applicant resided during the period of his employment. The director determined that the evidence provided by the applicant leaves an unaccounted for gap of time from May 2001 to January 2002. Consequently, the director found that the grounds of denial had not been overcome and affirmed the previous decision.

On appeal of this decision, the applicant states that he has proved prima facie eligibility for TPS and employment authorization and that he has established residence from before February 13, 2001 and physical presence from March 9, 2001, to the date of filing the TPS application. The applicant also submits the following:

1. Statements from and
2. Copies of a receipt and a stamped envelope from Express dated December 19, 2001 and January 23, 2002 respectively.
3. A copy of a utility bill dated July 17, 2002.
4. A copy of Western Union receipt dated March 2, 2002.

In his statement, says that he has known the applicant since January 2001. Mr. N identified as President of , Glen Cove, New York, states that the applicant used the services of his office to send letters and money to his family via Gigante Express since around February 2001. Both statements are without corroborative evidence, and as discussed above, affidavits are not, by themselves, persuasive evidence of residence or physical presence. Moreover, as indicated above, the applicant listed his date of entry in the United States as February 5, 2001. Consequently, Mr. 's statement offers conflicting information and therefore lacks credibility. The statements are therefore of little or no probative value. 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).

Of the remaining evidence, the receipt indicates a date of December 19, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States. Consequently, this evidence fails to establish the applicant's qualifying continuous residence from February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

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, and his subsequent decision on the motion 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.