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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

M

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

JUL 01 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.

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 that 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's representative 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 applicant initially submitted the following documentation with his TPS application:

1. A copy of a Virginia Vehicle Registration dated February 11, 2000 and bearing the applicant's name and Arlington, Virginia, address; and,
2. A copy of an Account Disclosure Form from CFS Bank dated July 25, 2000 and bearing the applicant's name.

On December 9, 2002, July 29, 2003, August 27, 2003, and January 21, 2004, 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 failed to respond to the multiple requests 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 4, 2004.

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

3. A photocopy of the applicant's El Salvadoran passport issued in June of 1998 in Washington, DC;
4. A copy of a pay stub from [REDACTED] dated August 5, 2000 and bearing the applicant's name;
5. A copy of a letter from the Social Security Administration dated July 9, 2001 and bearing the applicant's name and Brentwood, New York address;
6. A Driver's History Record as of December 26, 2003 from Richmond, Virginia, covering the driving history of the applicant from June 10, 1998 to December 19, 2000;
7. A copy of a pay stub from [REDACTED] bearing the applicant's name and Arlington, Virginia address and covering the pay period from July 8, 2000 to July 14, 2000;
8. A copy of a receipt from [REDACTED] dated May 22, 2001 and bearing the applicant's name and Brentwood, New York, address;
9. A copy of an IRS letter dated April 5, 2002 and bearing the applicant's name and Brentwood, New York address;
10. A copy of IRS Form W-2 for the tax year 2001 bearing the name of [REDACTED] of West Babylon, New York, as employer, and the applicant's name as employee;
11. A copy of IRS Form W-2 for the tax year 2001 bearing the name of [REDACTED] of Ronkonkoma, New York, as employer, and the applicant's name as employee;
12. An affidavit from [REDACTED] in which he states that he is the applicant's uncle, that he was able to see the applicant almost every week since his arrival in the United States in 1998, and that he maintained regular contact with the applicant when the applicant moved to New York in 2000, until he returned to the DC metropolitan area in December of 2001;
13. An affidavit from [REDACTED] in which he states that he is a friend of the applicant, that he has known the applicant from El Salvador, that he visited the applicant in Gaithersburg, Maryland, in March of 1998, that they played on the same soccer team, and that he maintained regular contact with the applicant when he moved to New York in 2000, until his return to the DC metropolitan area in 2001; and
14. An affidavit from [REDACTED] Acevedo in which she states that she is the applicant's uncles long-time girl friend, that she has known the applicant since December 24, 1998 when they met at her house for a Christmas Eve dinner, and that she maintained regular contact with the applicant during his stay in New York from August of 2000 through December of 2001.

The applicant's representative has not submitted sufficient evidence to establish the applicant's qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to May 23, 2001.

The documents submitted on behalf of the applicant are dated from 1998 to 2000, and as such, are dated before the requisite registration period and cannot be used to establish eligibility for TPS. The letter from the Social Security Administration dated July 9, 2001 (No. 5 above), the letter from the IRS dated April 5, 2002 (No. 9 above), and the copy of the receipt dated May 22, 2001 (No. 8 above) represent isolated dates and, therefore, are of limited value in establishing the requisite continuous residence and continuous physical presence of the

applicant in the United States. The W-2 Forms submitted for the tax year 2001 have limited probative value in that they do not demonstrate specific dates of employment.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States beginning in November of 1998. 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 entry into the United States is independent of their personal relationship with the applicant. If this knowledge is based primarily on what the applicant told them about his entry into the United States, then their statements are essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Although the affiants state that they were in regular contact with the applicant during his stay in New York from August of 2000 to December of 2001, there has been no independent documentary evidence submitted to substantiate their claims. 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, therefore, failed to establish that he has met the continuous residence and continuous physical presence requirements 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.

It is noted that the applicant submitted a second TPS application on September 11, 2002 [REDACTED] as a re-registration. On March 4, 2004, the director denied the second TPS application noting that the applicant could not file an application for re-registration where no previous TPS application had been approved. The applicant's representative does not address the director's denial on appeal.

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.