

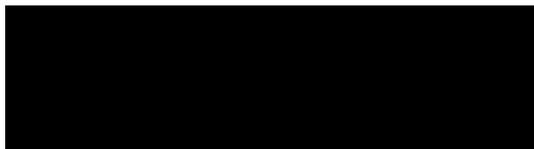
U.S. Department of Homeland Security
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Washington, DC 20529

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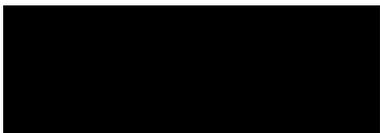
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FILE:  Office: VERMONT SERVICE CENTER Date: JUL 01 2005

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:



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 was eligible for late registration. The director also found that the applicant had failed to establish his qualifying physical presence in the United States during the requisite periods.

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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. A subsequent 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 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 eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 12, 2002.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and that he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On March 20, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish that he was eligible for late registration and denied the application on October 16, 2003.

On appeal, the applicant implies that he was approved for TPS in 1991 and therefore, is again eligible for TPS.

Contrary to the applicant's belief, The TPS El Salvadoran humanitarian program which began January 1, 1991, terminated on June 30, 1992. The applicant's past eligibility will not be used to determine his current eligibility for TPS under the new program. The applicant has failed to submit evidence demonstrating that during the initial registration period from March 9, 2001, to September 9, 2002, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which was pending or subject to further review or appeal, or was the spouse or child of an alien currently eligible to be a TPS registrant.

Although the applicant submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on March 20, 2003 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

1. A letter dated April 8, 2003 from [REDACTED] in which he stated that he had known the applicant since 1998 and has been a good friend of his for many years;
2. A letter dated April 1, 2003 from a co-worker of [REDACTED] in which he stated that he has known the applicant since 1992 and that they work together at the [REDACTED] House in Stony Brook, New York;
3. Copies of handwritten rent receipts dated January, April, May, June, August, and December of 2000 for rent paid for the [REDACTED] House by the applicant; and handwritten rent receipts for [REDACTED] New York, for January through March of 2001 and bearing the applicant's name as the renter;

4. A copy of a NYNEX summary of account statement dated October 19, 1995, and bearing the applicant's name; and
5. Copies of three pay stubs from [REDACTED] Café and Grill all of which are dated 1994.

The director determined that the rent receipts submitted in response to the request for evidence were sufficient to satisfy that the applicant had resided in the United States as of February 13, 2001. The director further determined that the applicant had failed to submit sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001 and thereafter denied the TPS application on October 16, 2003.

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

6. A letter dated August 9, 2004 from the executive director of Centro Cultural [REDACTED] [REDACTED] in which he states that the applicant has been known by the organization for many years, that the organization can certify that he has been living in Oyster Bay from 2001 to the present, and that he has never left the United States;
7. A letter dated August 11, 2004 and signed by the pastor of [REDACTED] [REDACTED] in which he states that he has known the applicant since the end of 2000, that the applicant has been a registered member of the church since December 13, 2000, that he has been attending meetings at the church from 2000 to the present, and that the church records show the applicant's address to be [REDACTED];
8. A letter dated August 9, 2004 from [REDACTED] in which he states that he has known the applicant, who resides at [REDACTED] since the end of February 2001;
9. An affidavit from [REDACTED] dated August 9, 2004 in which he states that he is confirming the fact that the applicant moved to [REDACTED], New York, during the first week of February 2001;
10. A copy of a date-stamped envelope dated November 16, 2001, and addressed to the applicant at [REDACTED];
11. Money Gram receipts dated September of 2000 and January of 2001 and bearing the applicant's name and [REDACTED];
12. Gigante Express money transfer receipts dated February and December of 2000 and January of 2001, and bearing the applicant's name and [REDACTED] New York, address;
13. A rent receipt dated January 4, 2001 bearing the applicant's name; and a copy of rent receipts dated May, June, and December of 2000 and bearing the applicant's name as renter;
14. An affidavit from [REDACTED] in which he states that he has known the applicant from March 9, 2001 through November 12, 2002 as a customer at J&R Steakhouse located in Rocky Point, New York, where he works as a waiter and bartender, and that he has served the applicant meals and has had friendly conversation with him; and,
15. An affidavit from [REDACTED] in which he states that he has known the applicant from March 9, 2001 through November 12, 2002, and that he employed the applicant at his company [REDACTED] All-Phase Home Improvements as a day laborer on an as needed basis.

The evidence of record is insufficient to establish the applicant's continuous residency in the United States. The applicant submitted rent receipts covering the period from January of 2000, to February of 2001. However, there has been insufficient evidence submitted to establish the applicant's continuous residency from April of 2001 through to November of 2001, and from December of 2001 to November of 2002. Further, the applicant submitted handwritten rent receipts for the address known as [REDACTED] (No. 3 above) which directly conflict with the dates and location of the applicant's residence as stated in Nos. 9, 11, and 12 above. 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 inconsistencies. For these reasons, the director's decision with respect to the applicant establishing the continuous residency requirements will be withdrawn.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The letters written by the applicant's friend and co-worker (Nos. 1, 2, and 6 above) are inconclusive; and fail to indicate the applicant's address during the period of their acquaintance. Mr. [REDACTED] fails to indicate in his letter (No. 8 above) written August 9, 2004 the origin of the information to which he attests. The letter from the pastor of God Family (No. 7 above) 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests. It is further noted that the pastor did not provide an address or church seal for his church.

The copies of money order receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as money order receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. The applicant claims to have lived in the United States since March of 1990. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

There has been no corroborative evidence submitted to support the statements made by [REDACTED] and [REDACTED] (Nos. 14 and 15 above) regarding the applicant's claimed presence and employment 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. 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).

It is determined that all other documentation submitted by the applicant is either dated prior to the requisite time period or is not sufficient to establish that the applicant satisfies 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 for this reason also 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.