

DISCUSSION: The application was denied by the Director, Vermont Service Center, reopened, and denied again by the Center Director. The case 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 asserts his 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).

Counsel for the applicant submitted the following documentation with the initial TPS application:

1. An affidavit from [REDACTED] in which he stated that the applicant worked for him from February of 2000 to July of 2002; and,
2. An affidavit from [REDACTED] in which he stated that he has known the applicant as a friend.

On June 6, 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 failed to 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 July 29, 2003.

Counsel for the applicant subsequently filed a Motion to Reopen which was granted by the director. Counsel also submitted the following evidence in support of his client's claim of eligibility for TPS:

3. An affidavit dated July 11, 2003, in which [REDACTED] California, states that he has known the applicant since 2000, that the applicant resided in Pomona, California, from November of 2000 to January of 2001, and that he resided in Washington, DC, from January of 2001 to the present; and,
4. An affidavit dated July 12, 2003, in which [REDACTED] states that she knows the applicant, that he resided in the state of California from December 18, 2000 to December 1, 2001, and that he moved to the state of Maryland after December 1, 2001.

The director determined that the applicant had submitted conflicting evidence regarding the applicant's stay in California and Maryland and therefore, failed to establish his eligibility for TPS. The director subsequently affirmed the previous decision on March 4, 2004.

On appeal, the applicant contends that due to his illegal status in the United States, he was unable to submit rent receipts or medical records to demonstrate his eligibility for TPS, but that he was able to submit affidavits from friends and co-workers.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to August 21, 2002. The applicant has failed to address the concerns of the director pertaining to the conflicting information contained in the affidavits submitted as evidence on his behalf (Nos. 3 and 4 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 conflict.

[REDACTED] does not explain in his affidavit how long he has known the applicant. The employment affidavit from [REDACTED] (No. 1 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)(i). Specifically, the affiant does not provide exact dates of employment, the address where the applicant resided during the period of his employment, or a description of the type of work performed by the applicant. It is further noted that the affiant did not indicate the name or location of his business, or verify that the business was even located inside the United States.

The applicant claims to have lived in the United States since November of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim of eligibility for TPS; 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). It is determined that the documentation submitted by the applicant is not sufficient to establish that he 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 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.