



U.S. Citizenship  
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Services

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FILE:

Office: TEXAS SERVICE CENTER

Date: JUN 24 2005

[SRC 05-009-54499]

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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 he had resided in the United States since February 13, 2001.

On appeal, the applicant's representative states:

entered the United States for the first time by Douglas, Arizona on February 01, 2001. He was detained by the Immigration Border Patrol with some Mexicans and was fingerprinted once (one finger) and return [sic] to Mexico. He then entered the second time, again through Douglas, Arizona, but this time he was not detained.

He lived with his father, sister & brother his arrival. We have enclosed (a) copy of an affidavit from his father (we will provide the original if requested) attesting that his son was living with them since he arrived. There is no other prove [sic] of this because entered EWI and was unable to find a job until later on.

We have tried to comply by showing you different receipts starting on March, 2001 which is when he was able to get a job. We enclosed the following for your easy perusal; copy of letter from employer, Social Security letter dated June 19, 2003 and copy of money transfers as well as check stubs.

Other than the sworn affidavit of his father, there is no other way that Mr. can provide you with other kind of evidence.

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).

On initial submission, the applicant submitted the following evidence to establish his residence in the United States since February 13, 2001:

1. A copy of a Western Union money transfer showing that he sent \$100 from Texas to El Salvador on March 21, 2002.
2. Two receipts from [REDACTED] showing that he sent \$150 from Texas to El Salvador on June 2, 2002 and on July 7, 2002.
3. His earning statements beginning on 11/05/2001 from [REDACTED] in Irvine, California for pay periods ending 11/18/2001, 1/13/2002, 2/24/2002, 3/10/2002 and 4/7/2002.

In response to the director's Notice of Intent to Deny dated January 31, 2003, the applicant submitted the following additional documentation concerning his continuous residence and continuous physical presence:

4. An undated letter from the owner of [REDACTED] in Rowlett, Texas indicating that the applicant worked for the company since March 2001.
5. A letter from the Social Security Administration dated June 19, 2003 acknowledging that the applicant had applied for a Social Security card on June 19, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 6, 2004. On appeal, the applicant reasserts his claim and resubmits the above listed documentation and:

6. An affidavit from his father, brother and sister in which they state that: "This is to notify the fact that [REDACTED] together by the end of February 11, 2001 until July 2002 at [REDACTED] help us to paid part of the rent from this apartment."

On appeal, the applicant's representative states that [REDACTED] entered the United States for the first time by Douglas, Arizona on February 01, 2001 and that he was detained by the Immigration Border Patrol with some Mexicans, was fingerprinted, and returned to Mexico. However, the applicant has submitted no evidence to support these assertions. It is noted that the assertions of counsel (or an authorized representative) do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Additionally, the regulations do not provide that uncorroborated affidavits from friends or family members are sufficient to establish the applicant's continuous residence or continuous physical presence in the United States.

Other than the affidavit from his family members, the applicant has not submitted evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from before February 13, 2001, to March 2001. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's decision to deny the application for TPS will be affirmed.



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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.