

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

M1

FILE:

[EAC 01 231 61803]

Office: VERMONT SERVICE CENTER

Date: JUN 27 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.

*Robert P. Wiemann*  
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 (AAO) 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 his qualifying continuous residence in the United States since February 13, 2001.

On appeal, the applicant submits a statement and additional 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 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.

- (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted with validity of the last extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 23, 2001.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On November 1, 2002, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001. In response, the applicant provided a letter dated January 15, 2003,

from Pastor [REDACTED] of Iglesia [REDACTED], Bay Shore, New York, stating that the applicant has been an "active member of our church since March 14, 2000."

It is noted that with the initial submission of his TPS application, the applicant also provided photocopies of: the biographic page of his El Salvadoran passport issued in [REDACTED], El Salvador, on September 21, 2000; and, original Gigante Express receipts dated "1/5/01," "2/10/01," and "17/7/01."

The director determined that the applicant had failed to establish his qualifying continuous residence in the United States during the requisite period and denied the application on September 22, 2003.

On appeal, the applicant states that he does not know what else he can do to prove his residence in the United States since he arrived here in December 2000. He states that employers and landlords are afraid of admitting that they have employed or rented to individuals without legal documents, so it has been difficult for him to obtain documentary evidence from these sources. He asks for understanding of his dilemma and hopes that the evidence he is submitting on appeal is sufficient. In support of the appeal, the applicant submits photocopies of the following documentation:

1. A letter dated October 20, 2003, from [REDACTED], Inc., Central Islip, New York, stating that the applicant has been employed with the company since July 15, 2003;
2. A notarized "Landlord Affidavit Proof of Rent," dated October 21, 2003, from [REDACTED], certifying that the applicant has rented a room [REDACTED] Brentwood, New York, since December 16, 2000;
3. An Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, for 2002, from [REDACTED], Secaucus, New Jersey; and,
4. An IRS Form 1040, U.S. Individual Income Tax Return, for 2002.

The director had informed the applicant that it was not enough to show that he was simply present in the United States; he needed to demonstrate that he had established a residence in the United States as of February 13, 2001. The affidavit from the landlord indicates that he applicant resided at the given address since December 16, 2000. The applicant also stated on his Form I-821, Application for Temporary Protected Status, and on his appeal notice, that he entered the United States in December 2000. The statement from the Pastor, however, conflicts with this information as it indicates that the applicant was present and active in the church since "March 14, 2000," a date that precedes the applicant's claimed date of entry into the United States. 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 (BLA 1988).

Therefore, for the period from February 13, 2001, through the filing date of the application, the record includes an original receipt dated May 1, 2001, but contains conflicting information about the applicant's residence in the United States. The applicant has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, for the reasons discussed above, the applicant has also failed to establish his continuous physical presence in the United States during the entirety of the requisite period. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b), and the application must also be denied for this reason.

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.