

Identifying Case Number
[REDACTED]
[REDACTED]

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



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE: [REDACTED]
[EAC 02 151 53389]

Office: VERMONT SERVICE CENTER

Date: MAY 10 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: 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, 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 that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to establish that he is a national of El Salvador.

On appeal, the applicant submits a brief letter and additional documentation.

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 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 § 244.3;
- (e) Is not ineligible under § 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.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General of the Department of Justice announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant submitted the following documentation in support of his initial Form I-821, Application for Temporary Protected Status, filed on April 1, 2002:

1. A photocopy of the identification page from his El Salvadoran passport, issued in Washington, D.C., on November 13, 2001;
2. A document in Spanish with no English translation;
3. Photocopies of earnings statements from [REDACTED] Alexandria, Virginia, dating from July 2001 through March 2002. The statements note the applicant's social security number as [REDACTED]. As of the earliest statement, dated July 13, 2001, the applicant had earned a total year-to-date total income of \$1,330.00, paid at the rate of \$10.00 per hour;
4. A photocopy of a 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement; and,
5. A letter from [REDACTED] owner of [REDACTED] Creations in Reston, Virginia, and [REDACTED] North Carolina, dated March 14, 2002. [REDACTED] states that the applicant was employed during the month of January 2001, earning \$575.00.

On June 10, 2003, the director requested the applicant to submit additional documentation to establish his continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The applicant was also requested to submit evidence that he is a national of El Salvador. The record reflects that the applicant failed to respond to the director's request.

The director determined that the documentation submitted was insufficient to establish the applicant's qualifying continuous residence and continuous physical presence during the requisite time periods. The director also determined that the applicant failed to establish he is a national of El Salvador. The director denied the application on July 24, 2003.

On appeal, the applicant states that he never received the director's request for additional documentation. In support of the appeal, the applicant resubmits a photocopy of the identification page from his passport, as well as three affidavits from acquaintances stating that they have known the applicant since his entry into the United States in January 2001.

It is noted that any document containing a foreign language submitted to CIS must be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). As the applicant has failed to comply with this requirement with regard to document No. 2, above, it will not be considered in the rendering of this decision.

There are discrepancies encountered in the evidence presented pertaining to the applicant's use of a social security number. On his initial Form I-821, the applicant indicated that he had never used a social security number. However, the documentation contained in No. 3, above, indicates that the applicant used social security number [REDACTED] while working for [REDACTED] from July 2001 through March 2002. These discrepancies have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

It is also noted, that based on the applicant's rate of pay and year-to-date earnings as of July 13, 2001, it appears that [REDACTED] could only have employed him for no more than one month prior to the first statement date of July 13, 2001. Therefore, the earnings statements provided in No. 3 do not cover the dates required to establish qualifying continuous residence and continuous physical presence. The employment letter from [REDACTED] (No. 5) 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, it does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's duties with the company. Furthermore, the affidavits from acquaintances submitted on appeal are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence.

Based on the evidence submitted in No.1. above, it is concluded that the applicant has satisfactorily established that he is a citizen or national of El Salvador. However, the applicant has not submitted sufficient 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. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will be affirmed.

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.