

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



**U.S. Citizenship
and Immigration
Services**

MI



FILE: [REDACTED]
[SRC 02 035 57596]

Office: VERMONT SERVICE CENTER

Date: **NOV 18 2005**

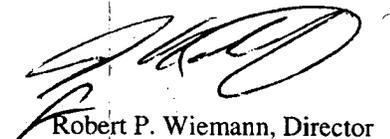
IN RE: Applicant: [REDACTED]

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 (VSC), and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant submits a 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 is eligible for TPS 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.

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 El Salvadorans was from March 9, 2001, through September 9, 2002. 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 the latest extension valid 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 must 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 applicant filed his initial Form I-821, Application for Temporary Protected Status, on October 9, 2001. In support of the application, the applicant submitted a photocopy of his El Salvadoran birth certificate,¹ and a letter

¹ 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 failed to comply with the aforementioned with regard to the translation of his birth certificate, that document cannot be considered as evidence in the rendering of this decision.

[REDACTED] dated August 9, 2001, stating that the applicant "lived in the United States before January of 2001."

On April 15, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record reflects that the applicant failed to respond to the request.

The director determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods and denied the application on July 27, 2004.

On appeal, the applicant submits photocopies of the following additional documentation:

1. An affidavit, dated August 22, 2004, from [REDACTED] Somerville, Massachusetts, stating that he had known the applicant since December 2000, and that the applicant had lived with him for three weeks prior to moving to Nantucket, Massachusetts;
2. Generic rent receipts, dated January through April 2001, signed by [REDACTED] and issued to an unnamed person;
3. Earnings statements, dated June through December 2001, issued to the applicant by Associated Planting Contractors, Inc.; and,
4. A letter, dated August 19, 2004, from [REDACTED], Director of the Hispanic Apostolate – Diocese of Fall River, Our Lady of Guadalupe Parish at St. James Church, New Bedford, Massachusetts, stating that the applicant had been an active member of the Saint Mary/Our Lady of the Isle Catholic Parish on the island of Nantucket, Massachusetts, since January 2001.

The applicant claims to have lived in the United States continuously from an unspecified date in December 2000, to the date of filing his TPS application on October 9, 2001. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim.

An affidavit from an acquaintance (No. 1, above) is not, by itself, persuasive evidence of residence and physical presence. The church letter (No. 4) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was officially registered as a parishioner at his church. Furthermore, the generic rent receipts (No. 2) are not supported by any objective evidence, such as a lease agreement or utility bills.

There are discrepancies noted regarding the applicant's employment. At the time of filing his initial TPS application, the applicant indicated that he had never used a Social Security number; however, No. 3, above, indicates that he used Social Security number [REDACTED] as early as June 3, 2001. 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 application. Further, it is incumbent on the applicant 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).

Based on a review of the record, it is concluded that the applicant has not submitted sufficient evidence 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 these reasons will be affirmed.

Beyond the decision of the director, the applicant has not submitted evidence to establish his identity and nationality, as required under the provisions of 8 C.F.R. § 244.9(a)(1). The application must also be denied for this reason.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for Temporary Protected Status has the burden of proving that he 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.