



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

M 1



FILE: [REDACTED]  
[EAC 02 287 51718]

Office: VERMONT SERVICE CENTER

Date: OCT 04 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 on appeal. The appeal will be dismissed.

The applicant is stated to be 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 continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, it is signed for and not by the attorney who is purported to represent the applicant. Therefore, he shall be considered as self-represented and the decision shall only be furnished to him.

On appeal, the applicant submits 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 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).

Upon initial submission, the applicant submitted:

1. An affidavit dated August 31, 2002 from [REDACTED] who states that he knew that the applicant came to this country on January 25, 2001 and that he has been living in Falls Church Virginia since that time. He also states that the applicant has not moved since he came into this country.
2. A copy of an undated Provident Bank credit card notification addressed to the applicant at an address in Falls Church, Virginia advising him how to use his new card.

On August 13, 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. He did not respond to the director's request. The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 17, 2004.

On appeal, the applicant submits:

3. An affidavit dated July 15, 2004 from [REDACTED] states that from February 1, 2001 to July 1, 2003, the applicant (his cousin), paid him \$300 per month rental and lived with him at [REDACTED] in Falls Church, Virginia. The affiant states that currently, the applicant continues to live with him at [REDACTED]
4. Copies of pages 1 and 5 of a Northern Virginia Board of Realtors Regional Sales Contract entered into by [REDACTED] for the purchase of [REDACTED]
5. Copies of the applicant's bank statements dated August 22, 2002 and September 24, 2002 from Provident Bank.
6. Copies of the applicant's parcel receipts #223 dated February 23, 2001, #222 dated March 20, 2001 and #225 dated May 10, 2001 from Zelaya Inc. International Courier showing he sent packages to a person in San Miguel.

Affidavits from acquaintances such as the one from [REDACTED] (Item #1) are not, by themselves, persuasive evidence of residence or physical presence. Also, the statement provided by [REDACTED] (Item # 3) is not supported by corroborative evidence to show that the applicant actually resided at either of the Falls Church addresses such as rental receipts. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support Mr. [REDACTED]'s assertions; however, no corroborative evidence has been provided. Finally, the parcel receipts submitted by the applicant (Item #6) are not persuasive evidence of continuous residence or continuous physical presence. Furthermore, such receipts would normally be numbered consecutively but they were not issued in order as receipt number #223 dated February 23, 2001 was written before receipt #222 dated March 20, 2001. This discrepancy along with the fact that the parcel receipts are surfacing only on appeal which is late in the adjudicative process calls into question the validity of these documents. 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. 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 determined that the applicant has not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States during the period from February 13, 2001, until March 9, 2001. He has, thereby, failed to establish that she 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 TPS will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.