

U.S. Department of Homeland Security  
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Washington, DC 20529

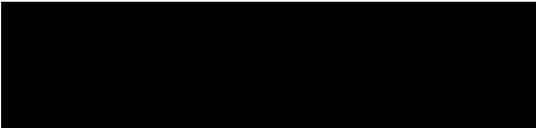


U.S. Citizenship  
and Immigration  
Services

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FILE:



[EAC 01 197 52172]

Office: VERMONT SERVICE CENTER

Date: **OCT 04 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.

A handwritten signature in black ink, appearing to read "R. 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 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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 June 24, 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.

In response to the director's request for evidence, the applicant stated that he has been in the United States since before March 9, 2001, and that initially he traveled around staying with various family members and eventually came to reside in New York where he maintained employment since August of 2001. The applicant submitted the following documentation:

1. A copy of a food stamp application dated May 22, 2002 and bearing the applicant's name;
2. Copies of postal money order receipts dated May 10, 2001, October 7, 2002, and August 12, 2003 and bearing the applicant's name and [REDACTED] New York address;
3. A photocopy of the applicant's New York State identification card issued to him on October 29, 2001; and,
4. An affidavit from [REDACTED] in which he stated that he has known the applicant since October of 2000 and that he is trustworthy.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

5. A letter written by the applicant in which he states that he has been employed by The Rolling Pin bakery since September of 2000;
6. A business card from The Rolling Pin bakery which was attached to the applicant's letter;
7. An affidavit from [REDACTED] in which she states that she has known the applicant for three years, has worked with him for two years, and has been his girlfriend for one year;
8. An affidavit from [REDACTED] in which he states that he has known the applicant as a friend living in the [REDACTED] New York area since August of 2000;
9. A letter from [REDACTED] in which he states that he has known the applicant for two years and that he met him at a friend's party;
10. A copy of a Social Security Statement dated March 17, 2003 and addressed to the applicant in which it is stated that the applicant's earnings for 2001 were \$2,375.00; and,
11. A copy of an earnings statement from The Rolling Pin bakery in which it is stated that the applicant's earnings for the year 2002 was \$6, 375.00.

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. The food stamp application, postal money order receipts, and New York State identification card (Nos. 1, 2, and 3 above) are all dated subsequent to the requisite dates cited above and therefore, cannot be viewed as evidence establishing continuous residence or continuous physical presence in the United States. Although the applicant states on appeal that he has been employed by The Rolling Pin bakery since September of 2000 he has failed to submit corroborating evidence to substantiate this claim. The applicant submitted a copy of an earnings statement (No. 11 above) which shows that the applicant was employed by The Rolling Pin bakery during the year 2002, however, this is subsequent to the requisite time period. The Social Security Statement (No. 10 above) demonstrates the applicant's earnings for the year 2001; however, there is no indication from the document what months the applicant was employed during that year.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] or [REDACTED] regarding the applicant's claimed presence in the United States since August of 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no evidence has been provided. Affidavits are not, by themselves, persuasive evidence of continuous residence or continuous physical presence. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(i) and (v).

The applicant has failed to establish that he has met the continuous residence and continuous physical presence 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.

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

**ORDER:** The appeal is dismissed.