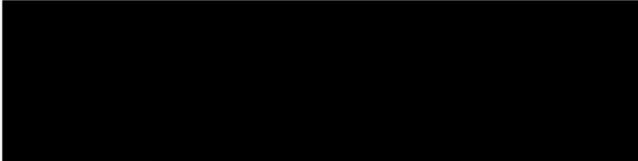




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
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invasion of personal privacy

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**DEC 07 2006**

FILE:



Office: VERMONT SERVICE CENTER

Date:

[EAC 02 222 53299]

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.

*RW* Robert P. Wiemann, Chief  
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.

On appeal, the applicant submits documentation to establish his continuous residence and continuous physical presence in the United States.

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.
- (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. An extension of the TPS designation has been granted with validity until September 9, 2007, 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).

The applicant initially submitted the following evidence in an attempt to establish his qualifying continuous residence and physical presence in the United States:

1. An affidavit dated June 14, 2002 from [REDACTED] who states that the applicant came to the United States in December 2000 from El Salvador.
2. An affidavit dated June 14, 2002 from [REDACTED] who states that she first met the applicant in the winter of 2000 in Alexandria, Virginia.

The record shows that the applicant filed this TPS application on June 17, 2002. On July 30, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence since February 13, 2001, and her continuous physical presence from March 9, 2001, to the date the application was filed. The director determined that the applicant failed to respond to the request and denied this application on January 12, 2004.

On appeal, the applicant provides a new mailing address in North Carolina and submits the following documentation:

3. A lease dated January 1, 2001 between [REDACTED] and the applicant indicating that he rented premises at [REDACTED] Manassas, Virginia from January 1, 2001 through January 1, 2002 for \$315 per month.

The record contains a Form I-263B, Record of Sworn Statement dated April 3, 2001 documenting an interview between the applicant who was using the name [REDACTED] and an investigative officer of the Philadelphia Office of the Immigration and Naturalization Service, (now U.S. Immigration and Customs Enforcement). In his interview, the applicant indicated that he was then residing at [REDACTED] Mifflin, PA." The applicant also indicated that he entered the United States without inspection near Douglas, Arizona and that he was born in Marcovia, Honduras. On December 5, 2001, an Immigration Judge in Philadelphia, Pennsylvania ordered him deported after he failed to appear for his immigration hearing. On December 5, 2001, the District Director in Philadelphia, Pennsylvania issued a Warrant of Deportation in the applicant's behalf under the name [REDACTED]

Other than the affidavits from his friends, and the lease document he submits on appeal, the applicant has not submitted any evidence to establish his qualifying continuous residence in the United States during the period from February 13, 2001, or continuous physical presence from March 9, 2001, to June 17, 2002, the date he filed the application. The lease document is of little value in this proceeding because some pages of the lease are original pages and some pages are copies, and the applicant's signature on the lease is markedly different from his signature on his Form I-821, Application for Temporary Protected Status, that he signed on June 14, 2002. Additionally, the applicant indicated that he was living in Mifflin, Pennsylvania during the same time that his lease said that he was living in Manassas, Virginia. 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 (BIA 1988). He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). Consequently, the director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. He has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. Additionally, at his interview on April 3, 2001, the applicant stated that he is a native of Honduras. 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 shall be 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 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.