



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
[EAC 02 267 51870]

Office: VERMONT SERVICE CENTER

Date: DEC 08 2006

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:

[REDACTED]

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, 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 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, counsel asserts the applicant's 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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid 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 documentation:

1. A copy of the applicant's El Salvadoran Cedula De Identidad;
2. An affidavit from [REDACTED] in which he stated that he possesses personal knowledge of the applicant entering the United States on or about January 15, 2001, the applicant is his nephew, and that the applicant lived with him at [REDACTED] since arriving in the country; and,
3. A photocopy of the applicant's Virginia Identification Card issued to him on August 8, 2002.

On May 28, 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. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 24, 2003.

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

4. A letter of employment from Capital [REDACTED] in which the CFO states that the applicant has been employed by the company since January 13, 2003;
5. A copy of the applicant's pay statements from [REDACTED] dated March through May of 2003;
6. A copy of a bank statement from First Union Bank dated April 28, 2003 and bearing the applicant's name as customer;
7. A copy of an affidavit from [REDACTED] in which he states that he is the manager of Capital Q Restaurant and that the applicant began working for the restaurant as a dishwasher preparer in January of 2001;
8. A copy of an affidavit from [REDACTED] in which she states that the applicant has worked with her at the Capital Q Restaurant since January of 2001; and,
9. A copy of an affidavit from [REDACTED] in which he states that the applicant has worked with him at the Capital Q Restaurant since January of 2001;

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite time periods. The letter of employment (see number 4 above) conflicts with the affidavits submitted by the applicant's alleged co-workers (see numbers 7 through 9 above). Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. 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). The applicant has failed to submit any objective evidence to explain or justify the inconsistency. There has been no corroborative evidence submitted to support the statements made by Maximiliano Urrutia regarding the applicant's claimed presence in the United States since January of 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Furthermore, affidavits are not, by themselves, persuasive evidence of residence or physical presence.

All other evidence submitted is dated subsequent to the requisite time periods and cannot be used to establish the applicant's residence and physical presence in the United States. 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.

It is noted that although the applicant claims to have entered the United States on January 15, 2001, the record of proceedings contains a copy of his Cedula De Identidad that was issued to him in El Salvador on January 7, 2002. The applicant has failed to explain this inconsistency. For this additional reason, the TPS application will be denied.

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.