

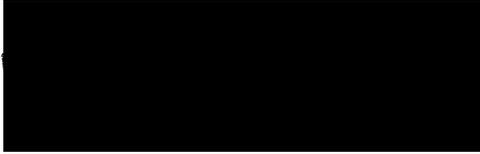
Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

M

**PUBLIC COPY**



FILE:



Office: Vermont Service Center

Date: **FEB 28 2006**

[WAC 02 127 52909]

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again 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 his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001, to the date of filing his application.

On appeal, the applicant submits additional evidence in support of 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 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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, 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 July 9, 2003, the applicant was requested to submit evidence to establish his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant responded to the director's request on September 8, 2003, with some evidence in an attempt to establish his residence and physical presence in the United States during the requisite time periods. The director determined that the applicant had failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001. Therefore, the director denied the application on July 22, 2004.

The applicant filed an appeal which was received at the VSC on September 10, 2004, after the prescribed period of 33 days. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the

motion, the director determined that the applicant had failed to establish his eligibility for TPS. The director, therefore, affirmed his previous decision and denied the application on January 24, 2005.

On February 24, 2005, the applicant filed an appeal from the director's January 24, 2005 decision, which is now before the AAO. On appeal, the applicant submits the following documentation: a copy of a receipt notice dated September 14, 2004, regarding his previous appeal; a copy of a notice dated September 28, 2004, regarding the director's decision to reopen the TPS application; a copy of a receipt dated December 8, 2003, from the Fairfax County General District Court; a copy of an earnings statement [REDACTED] reflecting a pay date of January 15, 2003; copies of earnings statements from [REDACTED] indicating pay periods from December 2, 2001 to February 2, 2002; copies of earnings statements from [REDACTED] dated July 11, 2003 to September 5, 2003; copies of two hand-written receipts dated March 13, 2004 and May 26, 2004; a copy of a flight itinerary dated August 24, 2002; a copy of his Virginia Insurance Identification Card valid from April 17, 2004 to April 17, 2005; and, a copy of a Western Union money transfer receipt dated September 15, 2002.

The evidence submitted by the applicant on appeal post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States. It is also noted that the applicant had previously submitted copies of the earnings statements from [REDACTED] were already considered by the director in his decision to deny the application. In addition, a closer review of these earnings statements reveals the Social Security number [REDACTED] is not the same as that claimed by the applicant on his applications for employment authorization and temporary protected status [REDACTED]

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. The applicant has, therefore, failed to establish that he 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.

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.