



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[EAC 02 210 51911]

Office: VERMONT SERVICE CENTER

Date: **JAN 05 2006**

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:



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, reopened, and denied again by the Director, Vermont Service Center. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 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, counsel for the applicant requests an additional 60 days to submit a brief and/or evidence to the AAO in support of the appeal. To date, no additional documentation has been received; therefore, the record is considered complete.

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.

- (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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest valid 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on June 5, 2002. In support of his initial application, the applicant submitted a photocopy of an abstract of his El Salvadoran birth certificate, with English translation, and a partial photocopy of an unsigned residential lease agreement for the term of one year to commence on January 1, 2000, and end on December 31, 2001. The lease agreement indicates the lessors' names [REDACTED] the lessee's names as the applicant and

[REDACTED] location of the premises as [REDACTED] D.C. 20010; and the rent as \$550.00 per month.

On August 4, 2003, the director requested the applicant to submit evidence in support of his application. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. In response, the applicant submitted a letter, dated August 8, 2003, [REDACTED] stating that the applicant had been his tenant at [REDACTED] December 31, 2000.

The director determined that the documentation submitted was insufficient to establish the applicant's qualifying continuous residence and continuous physical presence during the requisite time periods. The director denied the application on October 9, 2003.

On December 11, 2003, the applicant filed a motion to reopen the director's decision. In support of the motion, the applicant submitted a letter, dated November 8, 2003, stating that he lived with his brother-in-law at [REDACTED] [REDACTED] who helped, along with the applicant's church, to support him because he did not work. The applicant also submitted an affidavit, dated November 6, 2003, [REDACTED] stating that the applicant lived at his [REDACTED] located [REDACTED] [REDACTED] from December 28, 2000 to July 9, 2003.

The director again determined that the applicant had failed to establish that she 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. Therefore, on June 30, 2004, the director denied the application and reaffirmed the previous decision to deny the application. Counsel for the applicant filed an appeal of that decision on July 31, 2004. As previously indicated, no additional documentation has been received from counsel in support of the appeal.

The applicant claims to have lived in the United States from December 28, 2000, to the date of filing his TPS application on June 5, 2002. It is reasonable to assume that he would have a variety of evidence to support this claim. An affidavit from an acquaintance and a letter from a relative are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence.

There are discrepancies encountered pertaining to the residential lease agreement. The agreement indicates that the applicant [REDACTED] rented the apartment, however, in his affidavit [REDACTED] that he and the applicant lived at the apartment. Furthermore, the monthly rent is indicated as \$550, but the applicant states that he was being supported by his brother-in-law, the lessor, during that time period. Finally, the agreement indicates that it is for a one-year period, but the commencement and ending dates are for a two-year period. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. 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 application. Further, it is incumbent on the applicant 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 concluded that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. Consequently, the director's decision to deny the application for Temporary Protected Status will be affirmed.

Beyond the decision of the director, the applicant has not submitted an identity document bearing his photograph and/or fingerprint, as required under the provisions of 8 C.F.R. § 299.9(a)(1)(ii) and (iii). The application must also be denied for this 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.