

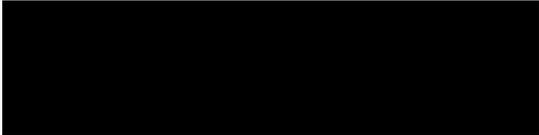
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**U.S. Citizenship
and Immigration
Services**

MI



FILE: [REDACTED]
[EAC 02 291 53567]

Office: VERMONT SERVICE CENTER

Date: **JAN 06 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: 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. The case is now before the Administrative Appeals Office (AAO) 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 continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits a letter and additional documentation.

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 August 29, 2002. In support of his application, the applicant submitted a photocopy of an English translation of his El Salvadoran birth certificate, with no original, and an affidavit from an acquaintance stating that the applicant had been present in the United States since January 2001.

On October 16, 2003, the director requested the applicant to submit evidence to establish his nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted photocopies of his birth certificate and the identification page from

his El Salvadoran passport, and a letter from his brother [REDACTED] stating that the applicant had been present in the United States since February 1996.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on January 28, 2004.

On March 5, 2004, the applicant filed a motion to reopen the director's decision. In support of the motion, the applicant submitted five additional letters from acquaintances attesting their knowledge of the applicant.

The director determined that the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001. Therefore, on June 29, 2004, the director dismissed the applicant's motion and reaffirmed his decision to deny the application. The applicant filed an appeal of that decision on July 24, 2004.

On appeal, the applicant states that he has previously submitted evidence that he is El Salvadoran. He also submits a second affidavit from his brother and a letter, dated July 23, 2004, from Popeye's Chicken and Biscuits, Washington, D.C., stating that the applicant had worked for the company full-time since January 2001.

The applicant claims to have lived in the United States from February 1996 to the date of filing his TPS application on August 29, 2002. It is reasonable to assume that he would have a variety of evidence to support this claim. Affidavits and letters from his brother and acquaintances are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The employment letter has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties. Furthermore, it is not supported by objective evidence such as employee payroll records or earnings statements.

There are discrepancies encountered pertaining to the applicant's claimed date of entry. On his Form I-821, the applicant claimed to have last entered the United States in February 1996; however, his passport was issued in El Salvador on December 20, 2000. 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. Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying continuous physical presence in the United States since March 9, 2001. Therefore, 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.