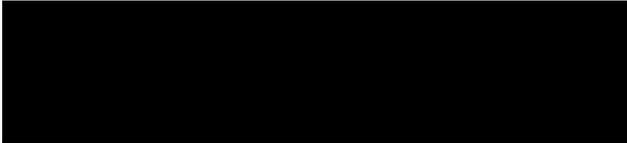


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U.S. Citizenship
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Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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FILE:



[EAC 03 008 51648]

Office: VERMONT SERVICE CENTER

Date: **JAN 06 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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits additional evidence.

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 temporary protected status 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. 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 extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 10, 2002.

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 indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on November 15, 2000. In support of his application, the applicant submitted the following:

1. an affidavit dated September 5, 2002, [REDACTED] stating that the applicant entered the United States on November 2000 and has not left this country since that date;

2. an affidavit dated September 5, 2002, [REDACTED] stating that the applicant came to the United States in November 2000 and has lived in the this country since that date; and,
3. an affidavit dated September 5, 2002, [REDACTED] stating that the applicant entered the United States in November 2000 and has lived in this country since that date.

On March 24, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted the following:

4. a letter dated April 8, 2004, from [REDACTED] for Green Tree Apartments in Lindenwold, New Jersey, stating that the applicant resided [REDACTED] October 2000 through September 2001 and had resided at [REDACTED] September 1, 2003;
5. an affidavit dated April 7, 2004, [REDACTED] that the applicant worked for him [REDACTED] Clementon, New Jersey, from November 2000 until March 2001 and was paid in cash;
6. an affidavit dated April 10, 2004, [REDACTED] stating that she has known the applicant "since the beginning of 2000;" and,
7. a photocopy of the applicant's 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return that appears to have been signed by the applicant on April 10, 2004.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on October 20, 2004.

On appeal, the applicant submits the following:

8. a photocopy of his New Jersey driver's license issued on August 27, 2003;
9. photocopies of a cover letter dated November 18, 2002, enclosed with the applicant's Employment Authorization Card and the Applicant Information Worksheet relating to the applicant's fingerprint appointment on June 14, 2003; and,
10. copies of documents previously submitted in response to the Notice of Intent to Deny.

The applicant's New Jersey driver's license (No. 8 above), his federal income tax return (No. 7 above), the cover letter (No. 9 above), and Application Information Worksheet (No. 9 above) are all dated after the requisite periods to establish continuous residence and continuous physical presence in the United States.

Without corroborative evidence, the affidavits [REDACTED] (No. 2 above), [REDACTED] (No. 3 above), [REDACTED] (No. 6 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The employment affidavit [REDACTED] 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, Mr. [REDACTED] does not provide any information regarding the applicant's duties for his company, periods of layoff if any, and the address where the applicant resided during the period of his employment.

Additionally, [REDACTED] states the applicant has lived [REDACTED] Lindenwold, New Jersey, since October 2000, but the applicant states that he arrived in the United States in November 2000. Furthermore, [REDACTED] states she has known the applicant "since the beginning of 2000." It is not clear [REDACTED] could have known the applicant since the beginning of 2000 when the applicant didn't arrive in the United States until November 2000. The applicant has not provided any explanation for these discrepancies in his claimed date of arrival in the United States. 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. Further, it is incumbent on 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. (Comm. 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status 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 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.