

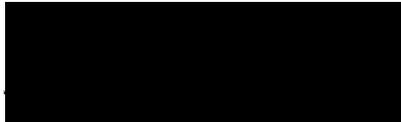


U.S. Citizenship
and Immigration
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FILE: [REDACTED]
[EAC 02 207 50472]

Office: VERMONT SERVICE CENTER

Date: **JUN 05 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, Chief
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 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, the applicant states that his employment authorization card has expired and requests assistance from Citizenship and Immigration Services in obtaining a new one.

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 TPS designation has been granted with validity 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 along with his TPS application:

1. An unsigned affidavit dated May 24, 2002 bearing the [REDACTED] which she stated that the applicant lived in her home at [REDACTED] Falls Church, Virginia since October of 2000; and,
2. An unsigned affidavit dated May 24, 2002 bearing the name [REDACTED] in which he stated that he has known the applicant since October of 2000.

On May 23, 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 timely respond to the director's request for evidence. The director subsequently denied the TPS application on July 24, 2003 because the applicant had failed to establish his qualifying continuous residence and continuous physical presence.

On motion to reopen, the applicant submitted the following documentation:

3. A copy of a pay statement from [REDACTED] of Centreville, Virginia dated February 2, 2001 and bearing the applicant's name as employee;
4. A copy of a pay statement from [REDACTED] of Calabasas, California dated January 19, 2003 and bearing the applicants name as employee;
5. A letter from [REDACTED] which he stated that he knows the applicant and that the applicant is honest and hard working;
6. A letter from [REDACTED] in which he stated that he knows the applicant and that the applicant has shown good character, honesty, and is a hard worker;
7. A letter from [REDACTED] in which he stated that he has known the applicant since he lived at [REDACTED] Virginia, and that he is a hard worker and is trustworthy; and,
8. A copy of a letter from [REDACTED] in which he stated that the applicant has been a member of his church since he arrived in the United States on February 13, 2001.

In response to a request for evidence dated February 4, 2004, the applicant submitted the following documentation:

9. An affidavit from [REDACTED] which he stated that he has known the applicant since March of 2001 and that he is very friendly and hard working;
10. An affidavit from [REDACTED] in which he stated that he has known the applicant since March 29, 2001 and that he is hard working and loyal;
11. An affidavit from [REDACTED] in which she stated that she has known the applicant since August of 2001 and that he is hard working; and,
12. An affidavit from [REDACTED] in which she stated that she has known the applicant since April of 2001 and that he is hard working, loyal, and dependable.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 4, 2005.

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

13. A statement from [REDACTED] in which he states that he has known the applicant since the year 2000; and,
14. A copy of an earnings statement from [REDACTED] of Arlington, Virginia dated March 17, 2004 and bearing the applicant's name as employee.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The affidavits submitted as evidence (Nos. 1, 2, and 9-12 above) are inconclusive and do not explain the origin of the information to which they attest. There has been no corroborative evidence submitted to support the statements made by [REDACTED] (Nos. 5, 6, 7, and 13 above) regarding the applicant's claimed presence in the United States since October of 2000. The applicant claims to have entered into the United States in October of 2000. It is

reasonable to expect that the applicant would have some type of contemporaneous evidence to support the statements made by the affiants; however, there has been no such evidence provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(a)(2)(i) and (v).

The copy of the letter from [REDACTED] (No. 8 above) 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)(v). Specifically, the applicant did not submit the original letter and the copy is not in affidavit form. In addition, the pastor does not explain the origin of the information to which he attests nor does he provide the address where the applicant resided during the period of his involvement with the church. It is further noted that the date of entry for the applicant in the letter appears to have been altered. There has been no plausible explanation given for the discrepancy found in the letter.

[REDACTED] and [REDACTED] company pay statements (Nos. 4 and 14 above) are dated subsequent to the requisite time periods; and therefore, cannot be used to establish continuous residence and continuous physical presence in the United States, as required. There has been no corroborating evidence submitted to substantiate the [REDACTED] pay statement (No. 3 above). 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.

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.