



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

M1

FILE:

[EAC 02 243 52807]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 31 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.

for Robert P. Wiemann, Chief
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 claims to be 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 had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 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 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 record shows that the applicant filed his TPS application on July 11, 2002. In a notice of intent to deny (NOID) dated March 12, 2004, the applicant was requested to submit evidence to establish continuous residence and continuous physical presence in the United States during the requisite period. The director reviewed the evidence of record, including evidence furnished by the applicant in response to the NOID, and noted that the Form W-2 showing earnings for 2001 establishes that the applicant worked sometime during 2001, but did not offer proof for the dates required for TPS. He further noted that other evidence furnished was dated 2002 and 2003, and that the letters furnished, without documentary evidence to support them, are not sufficient to establish continuous residence and continuous physical presence during the requisite periods. The director, therefore, denied the application on August 30, 2004.

On appeal, the applicant states that he is submitting the only evidence he could provide because he worked without legal documents. He resubmits documents previously furnished and addressed by the director, and documents pertaining to the applicant's spouse. He also submits:

1. A revised statement dated September 13, 2004, from [REDACTED] indicating that he was a self-contractor from 1995 until November 30, 2001, that he met the applicant through mutual friends in 2000, that he did not have any position available for him at that time, but on January 9, 2001, he hired the applicant as a floor coverer and carpet installer and he worked until September 20, 2001.
2. A letter of employment dated September 14, 2004, from [REDACTED] indicating that the applicant was employed by the company for the period from November 20, 2001 through March 22, 2002. The applicant submitted additional documentary evidence to establish his employment with this company.

3. A letter dated September 13, 2004, from New England Regional Council of Carpenters, AFL-CIO, United Brotherhood of Carpenters and Joiners of America, indicating that the applicant has been a member in good standing with the [REDACTED] since December 10, 2001.

The statement from Mr. [REDACTED] that he met the applicant in 2000 (No. 1 above) is inconsistent with his statement dated June 11, 2002, that was furnished with his initial TPS application. In that statement, Mr. [REDACTED] indicated that he has known the applicant for approximately four years [since 1998]. Furthermore, no supporting documentary evidence was furnished to establish that the applicant worked for Mr. [REDACTED] as claimed in No. 1 above. 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. It is incumbent upon 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

Furthermore, regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the statements provided to establish the applicant's qualifying residence in the United States were not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since January 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The remaining documents furnished by the applicant has established his continuous residence and continuous physical presence from November 2001 to the date of filing his TPS application on July 11, 2002. However, the applicant has not furnished credible sufficient evidence to establish eligibility during the requisite period.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). Therefore, the application will 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.