



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**



M

FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: MAY 03 2006

[EAC 02 048 53642]

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.

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 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 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.

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 November 27, 2001. On May 11, 2002, the applicant was requested to submit evidence 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. In response, the applicant submitted one affidavit:

1. from [REDACTED] dated August 5, 2002, stating that the applicant arrived in the United States on or about December 28, 2000, and that the applicant lived at his residence at [REDACTED] prior to February 13, 2001.

On October 28, 2002, the applicant was again requested to submit evidence to show continuous residence and continuous physical presence in the United States during the requisite period. He was advised that the one affidavit submitted in response to the director's request did not suffice as evidence of either continuous physical presence or continuous residence during the time frames. The director, in this request for evidence, listed examples of the evidence the applicant could submit to establish eligibility. The notice was mailed to the applicant's address at [REDACTED]. The applicant failed to respond.

On February 11, 2004, a notice of intent to deny was mailed to the applicant's new address at [REDACTED]. He was again requested to submit evidence to show continuous residence and continuous physical presence in the United States during the requisite period. Again, the applicant failed to respond; therefore, the director denied the application on June 23, 2004. The applicant appealed the director's decision on August 9, 2004. The director rejected the appeal on September 7, 2004, because the appeal was filed over the prescribed period of 33 days, he failed to provide any evidence to support his appeal, and the appeal cannot be treated as a motion because the requirements of 8 C.F.R. §103.5(a)(2) or (3) had not been met. On

September 20, 2004, the applicant appealed the director's decision to reject his appeal. He submitted a copy of the affidavit from [REDACTED] (No. 1 above). He also submitted:

2. an undated statement from [REDACTED] of St. John the Evangelist Roman Catholic Congregation, stating that the applicant attends the Spanish Mass at that church and he participates in different activities organized at the parish, that he knows the applicant since January 5, 2001, and that he fully recommends the applicant as a trustworthy person; and
3. copies of three rent receipts for the rent of [REDACTED] dated March 1, 2001, for the amount of \$500; dated June 1, 2001, for the amount of \$500; and dated August 1, 2001, for the amount of \$500.

In a notice of intent to deny dated January 11, 2005, the applicant was again requested to submit evidence to show continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director noted that, in response to the notice of intent to deny, the applicant provided duplicate information of the evidence that was already in the record (Nos. 1, 2, and 3 above). Therefore, the director denied the application on April 2, 2005.

On appeal, the applicant asserts that he entered the United States on December 28, 2000, but he could not secure a job because of his status in the United States; however, he was able to find a job by using an alias, [REDACTED] and that he has been working under this alias since January 2001. The applicant submits no documentation to support this assertion, and to establish that he and [REDACTED] are one and the same person.

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 affidavits provided by the applicant are not supported by any other corroborative evidence.

Additionally, the statement from [REDACTED] (No. 2 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 pastor does not explain the origin of the information to which he attests, how he knows the applicant, and he also failed to show inclusive dates of the applicant's membership at the church, and the address where the applicant resided during the membership period.

The rent receipts (No. 3 above) are generic in nature and are inconsistent with other information contained in the record. While these receipts indicate that the applicant was renting an apartment at [REDACTED] the record indicates that the applicant did not claim to have resided at this address until as early as August 9, 2004. The record also indicates that the applicant was residing at [REDACTED] as of November 1, 2001, and it is also noted that [REDACTED] (No. 1 above) stated that the applicant resided at this address.

The inconsistencies of the documents furnished raise questions of credibility. 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). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies in the documentation he submitted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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.

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.