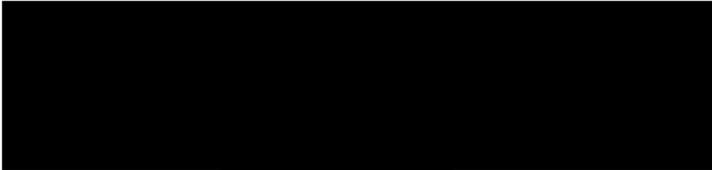




U.S. Citizenship
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Services

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FILE: [REDACTED]
[EAC 02 253 51086]

Office: VERMONT SERVICE CENTER

Date NOV 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, 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 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, 2007, 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 July 29, 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 in November 1996. In support of his application, the applicant submitted the following:

1. photocopies of billing statements from Washington Gas dated September 26, 2000 and October 23, 2000;

2. a photocopy of a billing statement from the District of Columbia Water & Sewer Authority dated August 28, 2000; and,
3. a photocopy of a Home Depot billing statement dated October 10, 2000.

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 December 22, 2004.

On appeal, the applicant submits the following:

4. a photocopy of his 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from [REDACTED] in Bloomingburg, New York;
5. photocopies of the applicant's New York State Identification Card issued on February 8, 2000, and his New York State Driver's License issued on February 26, 2001;
6. photocopies of earnings statements from an unidentified employer for the following pay periods: April 28, 2001 to May 4, 2001; May 19, 2001 to May 25, 2001; May 26, 2001 to June 1, 2001; June 2, 2001 to June 8, 2001; June 9, 2001 to June 15, 2001; June 16, 2001 to June 22, 2001; and, June 23, 2001 to June 29, 2001;
7. photocopies of the applicant's 1998 IRS Forms W-2 from [REDACTED] in Goshen, New York, [REDACTED], New Windsor, New York, and [REDACTED] The Olive Garden;
8. a photocopy of the applicant's 1997 IRS Form W-2 from [REDACTED] in Valis Gate, New York;
9. a photocopy of an earnings statement from [REDACTED] in Bloomingburg, New York, for the pay period from April 28, 2001 to May 4, 2001;
10. a photocopy of an ADP earnings statement from [REDACTED], in Chesapeake, Virginia, for the pay period ending March 18, 1998;
11. photocopies of an earnings statement from [REDACTED] dated April 16, 1997, February 20, 1998, and August 12, 2000;
12. a photocopy of an ADP earnings statement from [REDACTED] in Harriman, New York, for the pay period ending February 18, 2004;

13. a photocopy of a certificate dated March 27, 2002, from ██████████ Middle School, Wallkill, New York, recognizing the applicant for participating in the Home and Careers Program Careers Day 2002;
14. a photocopy of a letter dated August 13, 2004, from Hudson United Bank, Middletown, New York, stating that the applicant has had an account with that bank since February 8, 1997; and,
15. a Sears purchase receipt dated September 15, 1999.

The applicant subsequently filed a TPS re-registration application on May 16, 2005, under CIS receipt number WAC 05 224 74070. The director denied the re-registration application on August 15, 2005, because the applicant's initial TPS application had been denied, and he was not eligible to re-register for TPS. On appeal from the denial of the re-registration application, the applicant has submitted the following new evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States:

16. a photocopy of a New York States Division of Motor Vehicles Road Test Appointment notice dated September 20, 1999;
17. photocopies of receipts for fines from the State of New York Town Court, Town of Wallkill, New York, dated April 23, 1999 and September 17, 1999;
18. a photocopy of a New York State Department of Motor Vehicles Restricted Use License/Privilege Attachment application dated December 22, 2000;
19. a New York State Department of Motor Vehicle Order of Suspension or Revocation indicating that the applicant's New York State driver's license would be suspended for a period of 60 days effective December 25, 2000, because the applicant had been convicted on October 6, 2000, on the charge of speed not reasonable and prudent, and because this violation occurred during the applicant's probationary license period, along with a receipt dated May 18, 1999, from Decat Driving School in Middletown, New York, and a Prelicensing Course Completion Certificate dated May 19, 1999;
20. a photocopy of an automobile insurance policy from General Accident Insurance for the period from March 23, 1999 to March 23, 2000, along with a photocopy of a Temporary New York State Insurance Identification Card dated September 8, 1999.

The Washington Gas billing statements (No. 1 above), the District of Columbia Water & Sewer Authority billing statements (No. 2 above), the Home Depot billing statement (No. 3 above), the New York State Identification Card (No. 5 above); the applicant's 1997 and 1998 IRS Forms W-2 (Nos. 7 and 8 above), the ADP earnings statement from ██████████ (No. 10 above), the earnings statements from ██████████ (No. 11 above), the Sears purchase receipt (No. 15 above), the New York State road test appointment notice (No. 16 above), the receipts from the Town of Wallkill (No. 17 above), the documents relating to the suspension of the applicant's driver's license (No. 19 above), and the General Accident Insurance policy (No. 20) are all dated prior

to the requisite periods to establish continuous residence and continuous physical presence in the United States, and the ADP earnings statement from [REDACTED] (No. 12 above) is dated after the requisite periods.

The earnings statements from an unidentified employer (No. 6 above) cannot be accepted because they do not reflect the name and address of the employer. The applicant's 2001 IRS Form W-2 from [REDACTED] (No. 4 above) is corroborated by only one earnings statement (No. 9 above).

Additionally, there are discrepancies in the evidence submitted in support of the application. 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 applicant has not submitted sufficient [REDACTED] evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. He has, therefore, failed 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.

It is noted that the Federal Bureau of Investigation (FBI) fingerprint results report contained in the record or proceeding indicates that the applicant was arrested on March 22, 2004, in Spring Valley, New York, and charged with operating a motor vehicle with a blood alcohol content of 0.08% or greater, a Class U misdemeanor, and driving while intoxicated: first offender, also a Class U misdemeanor. It is further noted that the applicant has provided evidence indicating that his driver's license was suspended on December 25, 2000, for period of 60 days in connection with a conviction on the charge of operating a motor vehicle at a speed not reasonable and prudent. This may represent a third misdemeanor conviction. These offenses must be addressed in any further proceeding before CIS.

As previously stated, the applicant filed a re-registration TPS application on May 16, 2005. The Director of the California Service Center denied that application on August 13, 2005, because his initial TPS application had been denied and he was not eligible to re-register for TPS. The applicant filed an appeal from the denial decision on August 30, 2005. The appeal will be addressed in a separate decision.

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.