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U.S. Citizenship  
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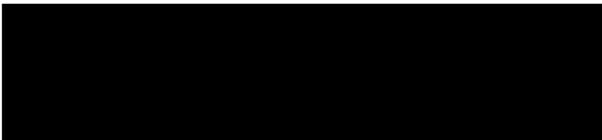
[EAC 01 256 53861]

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:



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.

*Cindy N. Gomez*

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 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, counsel asserts that the applicant is eligible for TPS.

It is noted that the director denied the applicant's TPS application on May 9, 2003, because he failed to report for fingerprinting as directed. The applicant filed a motion to reopen on June 14, 2003. The director dismissed the motion on February 17, 2004, because the motion had not been timely filed. The record also reveals that subsequent denials were issued on March 28, 2003, and July 1, 2005, both for the same reasons of lack of sufficient evidence of the required qualifying continuous physical presence and residence.

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 program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid 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).

On March 28, 2003 and November 23, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant provided the following documentation:

1. A copy of pay statements from Rainbow Mailing Systems, Inc., bearing the applicant's name as the employee and dated March, April and May of 1999;
2. A receipt from Cablevision dated December 1, 2004 bearing the applicant's and his brother's, [REDACTED] name, with an install date of April 21, 1999 and disconnect date of November 8, 2004;

3. An affidavit from [REDACTED] in which he stated that the applicant is his brother and has been living with him in the United States since 1994;
4. An affidavit from [REDACTED] in which he stated that the applicant is his brother and has been in the United States and living with him since 1991;
5. Handwritten generic rent receipts bearing the applicant's name as lessee and his brother, [REDACTED] as lesser and numbered and dated: #4 February of 2001, #5 March of 2001, #6 April of 2001, #7 May of 2001, #8 June of 2001, and #2 December of 2001;
6. A receipt from [REDACTED] of Elizabeth, New Jersey bearing the applicant's name as the patient and dated October 15, 2002;
7. Money order receipts made payable to Lab Corp. and dated October 27, 2001, and December 1, 2001;
8. A copy of a joint bank account statement from Independence Community Bank bearing the applicant's and his brother's [REDACTED] name with transaction dates of October 27, 2001 through April 12, 2003;
9. Invoice statements from Laboratory Corporation of America bearing the applicant's name as the recipient and dated July of 2001;
10. A letter from [REDACTED] of East Coast Warehouse and Distribution Corp./Safeway in which she stated that the applicant has been employed by the warehouse as a warehouseman since November 8, 2001;
11. Statements from Cablevision bearing the applicant's name as the customer and dated October, November and December of 2001, and November of 2002; and,
12. Statements from LCA Collections bearing the applicant's name as the patient and dated October, November, and December of 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 1, 2005.

On appeal, counsel states that the applicant is eligible for TPS, and that the evidence submitted is sufficient to establish his eligibility.

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 pay statements from Rainbow Mailing Systems, Inc. (see number 1 above) are dated prior to the requisite time periods and therefore, do not suffice to establish the applicant's eligibility.

The handwritten rent receipts contain inconsistencies in the date and number sequence (see number 5 above) that have not been explained. 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 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.

There has been no corroborative evidence submitted to support the affidavits of [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States since 1991. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's residence in the United States. 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(2)(i) and (v).

The Cablevision receipt submitted by the applicant and dated December 1, 2004 (see number 2 above) is not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. It is noted that the invoice transaction dates are inconclusive and that there is too much of a gap between the install date and disconnect date to determine the applicant's continuous residence and continuous physical presence in the United States since February 13, 2001. It is also noted that the Cablevision account statements (see number 11 above) are dated subsequent to the required time periods. 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 noted that there is a time gap between evidence submitted by the applicant dated May of 1999 and that which he submitted dated July of 2001. All other evidence submitted by the applicant is dated subsequent to the requisite time periods and therefore, cannot be used to establish 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. 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.

It is noted that the applicant has another record of proceeding that is identified as [REDACTED] is also noted that he was ordered deported/removed in absentia on December 1, 1997; that warrant remains outstanding.

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.

**ORDER:** The appeal is dismissed.