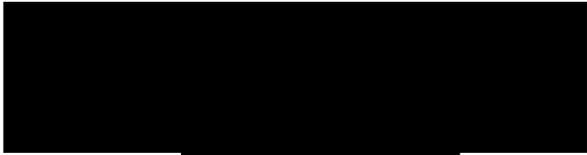


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FILE: [REDACTED]
[EAC 02 106 52072]

Office: VERMONT SERVICE CENTER

Date: **OCT 31 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 initially denied the application on June 1, 2004, due to abandonment because the applicant failed to appear for his fingerprint appointment or request that his fingerprint appointment be rescheduled.

On June 23, 2004, the applicant filed a motion to reopen the matter. On motion, the applicant stated that he never received the fingerprint appointment notice.

The director reopened the matter and provided the applicant with another opportunity to be fingerprinted. The applicant appeared for his second fingerprint appointment on August 4, 2004, and no criminal record was found.

The director denied the application again on October 6, 2004, 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 February 6, 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 on January 14, 2001. In support of his application, the applicant submitted the following:

1. an affidavit from [REDACTED], the applicant's brother, stating that the applicant entered the United States on January 14, 2001, and that he has provided the applicant with food, housing, and clothing, and part-time employment since the applicant's arrival in the United States.

On February 25, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted the following:

2. a photocopy of a Rhode Island Identification Card issued on April 3, 2002;
3. a photocopy of Social Security card [REDACTED] issued to [REDACTED]
4. a photocopy of the applicant's 2001 Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return, apparently signed by the preparer on March 25, 2004;
5. a photocopy of an earnings statement from Suburban Contract Cleaning Inc., for work performed by Employee Number [REDACTED] Social Security Number [REDACTED] in the pay period from December 20, 2001 to December 27, 2001;
6. photocopies of generic rent receipts from [REDACTED] payable to [REDACTED] for the period from February 2001 through March 2004;
7. a photocopy of an earnings statement from [REDACTED] in Bristol, Rhode Island, reflecting work performed by [REDACTED] Social Security Number [REDACTED] [REDACTED] for the pay period from September 13, 2003 to September 19, 2003;
8. a photocopy of an ADP earnings statement from Holiday Inn Providence, Providence, Rhode Island, reflecting work performed by [REDACTED] Social Security Number [REDACTED] [REDACTED] for the pay period ending October 11, 2003;
9. a photocopy of the applicant's 2002 IRS Form 1040, apparently signed by the preparer on March 4, 2004, a photocopy of a Rhode Island Form RI-1040, Rhode Island Resident Individual Income Tax Return, and a photocopy of the applicant's 2002 IRS Form W-2, Wage and Tax Statement, from [REDACTED] in Providence, Rhode Island; and,

10. a photocopy of the applicant's 2003 IRS Form 1040 apparently signed by the preparer on March 25, 2004 and the applicant's 2003 IRS Forms W-2 from Resolute Racing Shells and from First Providence Hotel Investors.

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 October 6, 2004.

On appeal, the applicant submits the following additional evidence:

11. photocopies of various documents relating to the applicant's brothers, [REDACTED] and [REDACTED]
12. a photocopy of the applicant's Combined Tax Statement from Citizens Bank of Rhode Island, for the year 2003, along with a photocopy of the applicant's 2003 IRS Form W-2 from First Provident Hotel Investors of Cranston, Rhode Island and a photocopy of the applicant's 2003 IRS Form W-2 from Resolute Racing Shells LP of Bristol, RI; and,
13. an affidavit dated October 31, 2004, from [REDACTED] the applicant's brother, stating that the applicant entered the United States on January 14, 2001, and has continuously resided in the United States since that date.

The Rhode Island Identification Card (No. 2 above), the earnings statement from Resolute Racing Shells, LP (No. 7 above), the ADP earnings statement from Holiday Inn Providence (No. 8 above), and the applicant's 2003 federal income tax return and 2003 Forms W-2 (No. 12 above) are dated after the requisite periods to establish continuous residence and continuous physical presence in the United States. The applicant's Social Security Card (No. 3 above) has no probative value because it is undated.

The affidavits from the applicant's brothers (Nos. 1 and 13 above) and the generic rent receipts (No. 6 above) are not supported by sufficient corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as rent 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 residence or physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

Additionally, as noted by the director in the denial decision, there is a discrepancy in the applicant's Social Security number in the earnings statements submitted in support of the application. The earnings statement from Suburban Contract Cleaning Inc., (No. 5 above) does not identify the employee by name, and the Social Security Number reflected on this earnings statement differs from the Social Security Number reflected on the applicant's Social Security Card (No. 3 above). The Social Security Number on the Suburban Contract Cleaning, Inc., earnings statement is [REDACTED] while the Social Security Number on the applicant's Social Security Card is [REDACTED]. Furthermore, the social security number from Resolute Racing

Shells, LP (No. 7 above) [REDACTED] differs from the Social Security Number reflected on the applicant's Social Security Card, and from the applicant's Social Security Number on the earnings statement from Holiday Inn Providence, [REDACTED]. The applicant has not provided any explanation for these discrepancies. 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's 2001 and 2002 federal and state income tax returns alone are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods because they do not reflect the exact dates of the applicant's residence and physical presence in the United States during those years. Finally, the documents relating to the applicant's brothers (No. 13 above) have no probative value because they do not relate to the applicant's residence and physical presence in the United States.

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 determined that the documentation submitted by the applicant is not sufficient 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 [REDACTED] CIS registration number [REDACTED] filed a Form I-130, Petition for Alien Relative, on the applicant's behalf on March 7, 1994, seeking to classify the applicant as the son of a lawful permanent resident. The director denied the application on September 4, 1996, because the petitioner had not established that the beneficiary qualified as his "son" for immigration purposes.

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.