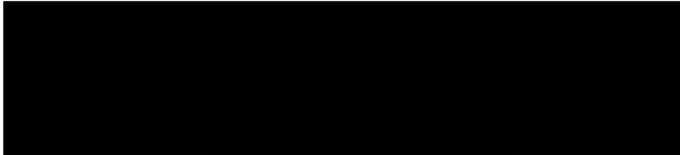


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invasion of personal privacy**



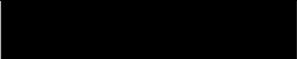
**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **OCT 31 2006**

[EAC 02 197 52339]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 July 10, 2003, because the applicant failed to appear to be fingerprinted or request that his fingerprint appointment be rescheduled.

On August 12, 2003, the applicant filed a motion to reopen the matter. On motion, the applicant stated that he never received the fingerprint appointment notice.

The director subsequently reopened the matter and provided the applicant with another opportunity to be fingerprinted. The applicant was fingerprinted on March 26, 2004, and no criminal record was found.

On October 6, 2004, 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 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 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 May 17, 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 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 August 15, 1990. In support of his application, the applicant submitted the following:

1. a photocopy of a Massachusetts birth certificate indicating that a son was born to the applicant and [REDACTED] also a citizen of El Salvador, in Cambridge, Massachusetts, on April 23, 2000;
2. a photocopy of an earnings statement from Z-Inn Auto Parks, Inc., in Boston, Massachusetts, for the pay period from March 31, 2002 to April 6 2002;
3. an affidavit dated May 1, 2002, from [REDACTED] stating that the applicant is her brother-in-law and she has known him since 1994;
4. an affidavit dated May 1, 2002, from [REDACTED] stating that the applicant is his brother and that the applicant has lived with him since April of 1998; and,
5. a photocopy of an Employment Authorization Card issued to the applicant on March 4, 1998 under CIS registration number [REDACTED], based on a pending asylum application.

On July 6, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record does not contain a response from the applicant.

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 repeats his claim to have lived in the United States since 1990. He submits the following evidence:

6. an affidavit dated November 3, 2004, from [REDACTED] stating that she has known the applicant since his birth in 1972;
7. a letter dated November 2, 2004, from [REDACTED] of Robi Realty Trust in Somerville, Massachusetts, stating that the applicant has been a tenant in rental property owned by her company since 1999;
8. a photocopy of a pay statement from Fitz-Inn Auto Parks, Inc., in Boston, Massachusetts, for the pay period from October 13, 2002 to October 19, 2002;

9. photocopies of money transfer receipts dated June 30, 1999; February 16, 2001; and, May 10, 2001;
10. a photocopy of a Massachusetts driver's license with an expiration date of October 22, 2000;
11. a photocopy of an ADP earnings statement from Allied Waste North America, Inc., dated November 7, 2003;
12. a photocopy of a money order payable to the Commonwealth of Massachusetts dated September 21, 2002; and,
13. a photocopy of a Blue Cross/Blue Shield Certificate of Group Health Plan Coverage dated June 25, 2003, indicating that coverage began on October 8, 2002.

The evidence listed in Nos. 1, 5, and 10 above are dated prior to the requisite periods to establish continuous residence and continuous physical presence in the United States, and the earnings statement from Allied Waste North America, Inc., (No. 11 above) is dated after the requisite periods. The affidavits from [REDACTED] (Nos. 3 and 4 above), and the affidavit from [REDACTED] (No. 6 above), have little evidentiary weight or probative value. Neither [REDACTED] (No. 3 above) nor [REDACTED] (No. 6 above) provides any information regarding the applicant's exact dates of residence in the United States or the address where he has resided since his arrival in this country. 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, there is a contradiction between [REDACTED] statement in his affidavit (No. 4 above) that the applicant had lived with him since April 1998 and [REDACTED] statement in her letter (No. 7 above) that the applicant has been a tenant of her company since 1999. The applicant has not provided any explanation for this discrepancy. 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 provided only two money transfer receipts (No. 9 above) to establish his continuous residence and continuous physical presence in the United States from May 10, 2001 to March 31, 2002. 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.

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.