

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

MJ



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 02 2007**  
[EAC 03 028 51847]  
[EAC 05 200 51986 – Motion to Reopen]

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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The case will be reopened and the appeal will again 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

A subsequent appeal from the director's decision was dismissed on May 27, 2005, after the Chief of the AAO also concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. On motion to reopen, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 by the Secretary of the Department of Homeland Security, with the latest granted 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 meets the above requirements. Applicants must 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).

In support of his initial TPS application, the applicant submitted:

1. A photocopy of an extract of his El Salvadoran birth certificate, indicating that it was issued in El Salvador on August 15, 2002. The English translation of the extract, however, indicates that it was issued on October 22, 2001;
2. A photocopy of his El Salvadoran identity card;

3. A letter, dated August 21, 2002, from [REDACTED] Pastor of St. Rose Rectory, Chelsea, Massachusetts. [REDACTED] states that the applicant is known in the community and is an active parishioner;
4. A letter, dated August 15, 2002, from [REDACTED] stating that he has known the applicant since 1999, and that he met him in Chelsea, Massachusetts, at a church meeting; and,
5. An un-translated letter, dated August 26, 2002, from [REDACTED]

On December 3, 2003, 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. In response, the applicant submitted:

6. An affidavit, dated December 16, 2003, from [REDACTED] stating that she has known the applicant since January 2001. [REDACTED] further states that, to the best of her knowledge, the applicant has not left the United States since his entry in 1999;
7. An affidavit, dated December 16, 2003, from [REDACTED] stating that she has known the applicant since January 2001. [REDACTED] further states that, to the best of her knowledge, the applicant has not left the United States since his entry in 1999; and,
8. A letter, dated December 17, 2003, stating that he cannot submit any further documentation, such as utility bills, because he did not have a social security number.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on February 25, 2004. The applicant filed an appeal from that decision on May 27, 2005. On appeal, the applicant submitted:

9. An affidavit, dated February 29, 2004, from [REDACTED] stating that she has known the applicant since January 2001. [REDACTED] further states that, to the best of her knowledge, the applicant has not left the United States since his entry in 1999;
10. An undated letter from [REDACTED] stating that she has known the applicant for approximately one year;
11. Photocopies of the applicant's earnings statements indicating that he was employed by Doran Greenhouses, Inc., from March 27, 2003, to August 15, 2003;
12. Photocopies of earnings statements dated January and February 2004;
13. A photocopy of a letter from the Social Security Administration, Chelsea, Massachusetts, indicating that the applicant applied for a social security card on January 17, 2003; and,
14. A photocopy of a Vigo international money transfer receipt, dated January 16, 2004.

The Chief of the AAO dismissed the applicant's appeal on May 27, 2005. The applicant filed the current a motion to reopen that dismissal on June 27, 2005.

On motion, the applicant submits:

15. An affidavit;

16. Photocopies of receipts, issued to the applicant by [REDACTED] with what appear to be altered issue dates;
17. A letter from [REDACTED] of Seoul, dated September 14, 2003, stating that the applicant had been employed since January 2001; and,
18. An affidavit, dated June 13, 2005, from [REDACTED], stating that the applicant had rented an apartment from him from September 1, 2000, to October 22, 2001.
19. An affidavit, dated June 17, 2005 from an acquaintance.

The letters and affidavits provided by the applicant from himself and acquaintances (Nos. 4, 6, 7, 9, and 15, and 19, above) are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The employment letter (No. 17) 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)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant worked, the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any). Furthermore, it is not supported by any corroborative documentation, such as pay stubs and company employment records. Similarly, No. 18 has little evidentiary weight or probative value as it is not supported by objective evidence, such as credible rent receipts and/or a lease agreement. The affidavit from [REDACTED] (No. 3) has little evidentiary weight or probative value as it does not provide the specific date that the applicant was registered as a parishioner at his church. No. 5 is un-translated; No. 10 is not dated; and No 16 contains alterations. While Nos. 11, 12, 13, and 14, contain evidence of the applicant's residence and physical presence in the United States from January 2003 to January 2004, they are dated well beyond the dates required for establishing qualifying continuous residence and continuous physical presence.

Furthermore, it is noted that the extract of the applicant's birth certificate, both the photocopy and translation, indicates that it was issued in El Salvador after the applicant's claimed date of entry into the United States. These discrepancies have not been explained and call into question in the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any 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).

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the previous decision of the AAO, dated May 27, 2005, will be affirmed, and the appeal will again be dismissed.

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.