

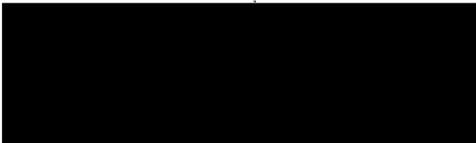


U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

ML



FILE: [REDACTED]
[EAC 06 356 71831]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2007

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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 (VSC), 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 applying for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The applicant filed an initial Form I-821, Application for Temporary Protected Status, under receipt number SRC 02 199 54240 during the initial registration period. The Director, Texas Service Center, denied that application on February 19, 2004, after determining that the applicant had not submitted sufficient evidence to conclusively prove eligibility for TPS. The applicant filed a subsequent I-821 on January 18, 2005 under receipt number EAC 05 110 70208 that was denied by the VSC Director on June 18, 2005.

The applicant filed the current application on September 21, 2006. The VSC Director denied the application because the applicant failed to establish he was eligible for late initial registration. The director also found that the applicant had not established that he had continuously resided in the United States since February 13, 2001 or that he had been continuously physically present in this country since March 9, 2001.

On appeal, counsel states that the applicant arrived in the United States in June 2000, that the lease document that the applicant submitted was not altered by inserting his name into the document and that Mr. [REDACTED] is otherwise eligible for TPS.

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 designated by the Attorney General 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f) (1) Registers for TPS 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.

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. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application with Citizenship and Immigration Services on September 21, 2006.

To qualify for late registration, an applicant must provide evidence that during the initial registration period, he or she fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On appeal, the applicant submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for TPS is affirmed.

A list of the evidence submitted by the applicant concerning his continuous residence and continuous physical presence during the required period is shown below:

1. A copy of a lease dated July 1, 2000, for an apartment in Nashville, Tennessee, showing the applicant and his brother as the lessees from July 2000 to December 1, 2000.
2. A copy of an affidavit of the applicant and his brother stating that they both signed the apartment lease dated July 1, 2000, at the same time and that it was not altered by them or by anyone else under their instructions. They forward an additional copy of the July 1, 2000, lease and indicate that it is a poor quality copy as can be seen by the slanted print.
3. A copy of the applicant's IRS Form 1099-MISC, U.S. Miscellaneous Income Tax Statement, showing earnings of \$258 from [REDACTED] in Nashville, Tennessee, for 2001.

4. A copy of the applicant's State of Tennessee identification card issued on September 22, 2003.
5. A copy of an affidavit dated August 25, 2006, from [REDACTED] of Nashville, Tennessee, who states that he has known the applicant since February 10, 2001.
6. A copy of the applicant's Republic of El Salvador passport showing it was issued to him on January 9, 2003 in Dallas, Texas.
7. A copies of the applicant's IRS Forms 1040, U.S. Individual Income Tax Return, for 2003, 2004 and 2005.
8. A copy of the applicant's IRS Form 1096, Annual Summary and Transmittal of U.S. Information Returns, for 2006.
9. A copy of a letter dated May 3, 2007, from [REDACTED] transmitting a copy of the applicant's receipt for a \$200 jewelry purchase. The receipt is dated January 6, 2001.

Counsel's statement that the lease document that the applicant submitted had not been altered by inserting his name into the document is noted. However, assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988). Both copies of the July 1, 2001 apartment lease dated July 1, 2000 listed in Item #1 and #2 above submitted for the record appear have been altered by adding the applicant's name to the lease. Doubt 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 application. 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). Affidavits from acquaintances, (Item #5), and letters transmitting jewelry receipts, (Item #9), transmitted as evidence in this case are not persuasive evidence of continuous residence or continuous physical presence.

It is determined that the applicant has not submitted sufficient evidence to establish his continuous residence or continuous physical presence in the United States during the period since February 13, 2001. He has, thereby, failed to establish that he has met the 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 for these additional reasons.

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 cited 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.