

PUBLIC COPY



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

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

M

FILE: [REDACTED]
[EAC 01 200 55288]

Office: VERMONT SERVICE CENTER

Date: **MAY 31 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:
[REDACTED]

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, 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 continuously resided in the United States since February 13, 2001; and that he had been continuously physically present in the United States since March 9, 2001. On appeal, counsel asserts the applicant's claim of eligibility 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 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 April 19, 2002 and April 28, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 16, 2003.

The applicant appealed the director's decision on July 7, 2003. The AAO remanded the case to the Vermont Service Center on November 17, 2004, because the director had failed to specify the reasons for his denial. The director issued a new denial decision on August 3, 2006, in which he stated 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 time periods.

On appeal, counsel states that the applicant is eligible for TPS in that he has lived in the United States since July of 1998, and that the applicant worked under an alias prior to the time he received work authorization in 2001.

The applicant submitted the following documentation:

1. A copy of an identification card issued to the applicant on July 10, 1998;

2. A memo from [REDACTED] in which it is stated that [REDACTED] was employed by the company from September of 1999 to August of 2001;
3. Copies of money order receipts from the applicant and made payable to Immigration and Naturalization Service, and dated April 7, 2001;
4. A copy of a letter from Gigante Express to the applicant and postmarked April 23, 2001;
5. A translated letter from the applicant's sister in which she stated that the applicant has been in the United States since 1998;
6. A letter from [REDACTED] Delivery dated October 1, 2001, and bearing the applicant's name as customer;
7. Copies of IRS Form W-2, Wage and Tax Statements for the 2001 and 2002 tax years;
8. Copies of IRS Form 1040, Income Tax Returns for the 2001 and 2002 tax years;
9. A copy of a check from East Boston Savings Bank dated May 12, 2001, and bearing the applicant's name as remitter;
10. Copies of pay statements from Boston [REDACTED] Inc. dated April, May and June of 2002 and bearing the applicant's name as employee;
11. A copy of a pay statement from [REDACTED] dated July of 2002 and bearing the applicant's name as employee; and,
12. A copy of a pay statement from [REDACTED], Inc. dated March and April of 2001, and bearing the name [REDACTED] as employee.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous **physical presence in the United States** during the requisite time periods. Although the applicant contends that he and [REDACTED] are the same person, there has been no independent documentary evidence submitted to substantiate that claim. The income tax returns (Nos. 7 and 8 above) do not specify the dates in which the applicant was actually employed during any given year. The applicant's Arizona identification card (see number 1 above) was issued to him prior to the time periods and cannot be used to establish his actual residence and presence in the United States since February 13, 2001. All other evidence submitted is dated subsequent to February 13, 2001 and 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.

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.