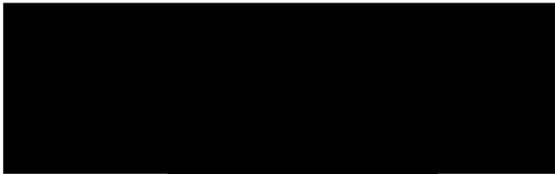


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**U.S. Citizenship  
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Services**

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**M**

**FILE:** [REDACTED]  
[WAC 02 234 54617]

**Office:** Vermont Service Center

**Date:** **JAN 03 2008**

**INRE:** 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 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 by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that he is 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 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. The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, 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 11, 2007, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. The applicant, in response, provided pay-stubs, tax documentation and money order receipts.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 13, 2007.

On appeal, the applicant reasserts that he is eligible.

On several forms 1-821 and 1-765 submitted by the applicant he asserts that his last entry into the United States was January 5, 2002. This is subsequent to the continuous residence and physical presence requirements, and would render the applicant statutorily ineligible for TPS. The applicant has provided a series of pay-stubs from Reflectech, Inc., which are contiguous and consistent, and tend to corroborate his presence from March 2002, shortly after his alleged arrival. However, in response to the NOm, the applicant submitted a pay stub from December of 2001 bearing the same format, same name misspelling, and business attribution, for a different

company. In addition, the social security number referenced by the pay stubs on which the applicant's name is misspelled is not consistent with CIS records. This raises doubt about the authenticity of the evidence submitted, and certainly does not rehabilitate applicant's own assertion that he arrived subsequent to the continuous residence and physical presence periods.

Regardless of the inconsistencies in the submitted evidence, even in a light most favorable to the applicant the evidence does not cover the period of February 2001 to November 2001. The lack of evidence covering this critical 10-month period is fatal to the application.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to January 5, 2002. 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.

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.

**ORDER:** The appeal is dismissed.