



U.S. Citizenship
and Immigration
Services

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

PUBLIC COpy



M

FILE:

[WAC 05 21476510]

OFFICE: Vermont Service Center DATE:

JUL 07 2008

INRE:

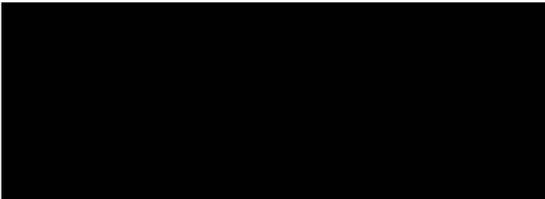
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.c. § 1254

ON BEHALF OF APPLICANT:



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, 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 record reveals that the applicant filed his initial TPS application within the initial registration period on April 13, 2001, under Citizenship and Immigration Services (CIS) receipt number EAC 01 179 53211. The Director, Vermont Service Center, denied that application on April 9, 2003, after he determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite periods. On May 10, 2003, the applicant submitted an appeal of the director's decision which was denied by the Chief of the AAO on September 20, 2007, after he concluded that the applicant had failed to establish his eligibility for TPS. The record does not reflect that the applicant filed a motion to reopen.

The applicant filed his current TPS under CIS receipt number WAC 05 21476510, and indicated he was filing a new application for TPS. The director denied that application on November 20, 2007, after he determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the qualifying periods. The applicant has now submitted an appeal.

On appeal, counsel states that the applicant was undocumented from the date he entered the United States to the date he filed his TPS application, therefore, he is unable to provide a substantive documentary record of employment, medical, rental, and education expenses.

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 designation of TPS for El Salvadorans has been extended several times, 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).

The applicant was informed by the director on April 9, 2003, that his initial TPS application was being denied because he had not established his continuous residence and continuous physical presence in the United States during the requisite periods. The AAO upheld that denial on September 20, 2007. With his current TPS application filed on March 3, 2005, the applicant has not provided any new and compelling evidence to establish his eligibility for TPS. The director determined that the applicant had failed to submit sufficient evidence to

establish his continuous residence and continuous physical presence and denied the current TPS application on November 20, 2007.

On appeal, counsel states that the director failed to "consider the circumstances of the 'continuous physical presence' and the 'continuous residence' of the applicant relevant to the T.P.S to the date of the initial filing." In addition, counsel submits the following documentation:

1. Copies of three Customer's Receipt(s) from the United States Postal Service dated April 5, 2001;
2. Copies of a Form I-821, Application for Temporary Protected Status, and a Form I-765, Application for Employment Authorization, receipt notices dated April 13, 2001;
3. Copies of rent receipts dated January 2001, April 2001, and May 2001;
4. Copies of employment verifications dated April 19, 2003 and December 7, 2007, from [REDACTED] attesting that the applicant was hired as an independent worker at [REDACTED] Korean restaurant on December 24, 2000, and remained employed until March of 2004;
5. An affidavit from the applicant's mother, [REDACTED], stating that the applicant came to the United States in June of 1998;
6. A copy of the applicant's mother's Permanent Resident Card;
7. A copy of the applicant's mother's marriage certificate;
8. A copy of the applicant's birth certificate and an English translation;
9. A copy of a Lease Agreement dated January 22, 2001;
10. Copies of Lease Agreement Renewal Lease Forms dated August 7, 2001 and October 16, 2003; and,
11. Copies of photographs of the applicant which appear to have been taken on January 5, 2001, and December 25, 2000.

The hand-written rent receipts are not supported by any credible evidence. The lease agreement provided appears to contain an altered date for the commencement of the lease period. It is reasonable to expect that the applicant would have some type of reliable contemporaneous evidence to support these assertions; however, no such evidence has been provided. Furthermore, the credibility of these documents is suspect since the receipts bear no address of the rental premises. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility.

In addition, the employment letters from [REDACTED] have little evidentiary weight or probative value as the applicant failed to provide corroborative documents of the applicant's employment with the company such as pay stubs, W-2 Forms, or certification of filing of Federal, State or local income tax returns. Furthermore, there is no indication of where the photographs of the applicant were taken, or even if they were taken in the United States.

The applicant has not submitted any evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. 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.