



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 02 093 50931]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 15 2006

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.


for

Robert P. Wiemann, Director
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 had failed to establish that he had been continuously physically present in the United States from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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 § 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.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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, with the latest extension valid until September 9, 2006, 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 record shows that the applicant filed his TPS application on January 18, 2002. In a notice of intent to deny dated June 29, 2004, the applicant was requested to submit evidence to show that he had been continuously physically present in the United States from March 9, 2001, to the date of filing the application. The director noted that in response, the applicant submitted:

1. A letter from [REDACTED] verifying that the applicant lived in his house [REDACTED] during the year 2000.
2. An airline passenger ticket, baggage check, and boarding pass dated April 4, 1999.
3. An El Salvadoran passport issued to the applicant in New York on November 8, 2000.

The director determined that these documents only verify that the applicant was in the United States during the years 1999, 2000, and 2004; however, he failed to submit documents to show continuous physical presence during the requisite period and denied the application on September 1, 2004.

On appeal, the applicant asserts that he first applied for TPS and employment authorization on August 14, 2001, his employment authorization did not arrive until February 28, 2002, and that he worked in 2001, but he did not have a Social Security number until 2002. It is noted that the applicant did file his first TPS application on August 17, 2001 (EAC 01 257 55310). However, the director denied that application on April

1, 2003, after determining that the applicant had abandoned his application by failing to appear for a scheduled fingerprinting. The applicant did not file a motion to reopen within 30 days from the date of the denial.

The applicant submits the following on appeal:

4. A copy of Form W-2, Wage and Tax Statement for 2002, a copy of Form 1040EZ, Income Tax Return for 2002, and a copy of State of New Jersey 2002 income tax refund dated March 17, 2003.
5. Copies of 12 receipts for the rent of "(1) room" at [REDACTED] dated November 30, 2000; January 30, 2001 thru October 30, 2001, inclusive; and December 30, 2001.
6. Although not addressed by the director, it is noted that the applicant submitted with his application a copy of a State of Virginia Identification Card issued to the applicant on January 4, 2001.

The rent receipts (No. 5 above) are generic and have little evidentiary value. It is noted that the receipts were signed by [REDACTED] however, [REDACTED] had indicated on his statement (No. 1 above) that the applicant lived in his house "during the year 2000." Further, the applicant listed his address on the Virginia Identification Card issued on January 4, 2001 (No. 6 above), [REDACTED]. It appears that the applicant was not residing in New Jersey during the period indicated on the rent receipts (No. 5 above).

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

While the record shows that the applicant was present in the United States as of January 4, 2001, prior to the requisite period required to establish continuous residence in the United States, the applicant has furnished no documentary evidence to establish that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001.

The applicant has failed to establish that he has met the criteria for continuous physical presence in the United States since March 9, 2001. 8 C.F.R. § 244.2(b). Additionally, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001. 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the Federal Bureau of Investigation fingerprint results report, contained in the record of proceeding, shows that on May 13, 2005, in Manassas, Virginia, the applicant was arrested for Count 1, driving while under the influence of alcohol; and Count 2, driving while intoxicated, refusal of test, first offense. The final court disposition of this arrest is not included in the record of proceeding, nor is there evidence that the applicant was requested to submit the court dispositions of all of his arrests. CIS must address this arrest and/or conviction in any future decisions or proceedings.



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 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.