

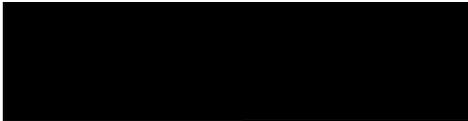


U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
[EAC 02 012 53818]

Office: Vermont Service Center

Date: JAN 30 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: 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened and denied again 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 his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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 October 31, 2002, the applicant was requested to submit evidence to establish his "residence in the United States as of February 13, 2001", and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant submitted a single affidavit in support of his eligibility for TPS. On July 10, 2003, the director denied the application because the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite time periods.

The applicant filed an appeal which was received by the VSC on October 4, 2003, after the prescribed period of 33 days. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the grounds for denial had not been overcome. The director, therefore, denied the application again on February 20, 2004.

On March 22, 2004, the applicant filed an appeal to the director's on February 20, 2004 decision, which is now before the AAO. On appeal, the applicant states that he has asked friends to help him and that he does not know what else to do to prove his physical presence in the United States since February 2001. Along with his appeal, the applicant provides the following: a copy of his IRS Form 1099-MISC, Miscellaneous Income, for the year 2003; an affidavit dated March 19, 2004, from [REDACTED] who stated that she had known the applicant since March 1998; and an affidavit dated March 19, 2004, from [REDACTED] who stated that he had known the applicant since April 1998.

The applicant's Form 1099-MISC covers the year 2003 which is after the beginning of the requisite time periods for El Salvadoran continuous residence and continuous physical presence. In addition, although the tax document may indicate that the applicant was in the United States during the year 2003, this document does not provide the actual dates of employment. The statements provided by [REDACTED] and [REDACTED] regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence covering the requisite time periods. The applicant claims to have entered the United States in March 1998. It is reasonable to expect that the applicant would have some type of contemporaneous evidence in support of his qualifying continuous residence and continuous physical presence in the United States. Affidavits from acquaintances and family members are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. It is also noted that the record contains an employer letter dated September 30, 2003, from [REDACTED] President of [REDACTED] and Developers in Amityville, New York, who stated that **the applicant had been employed with his company since October 2001**. The applicant's employment with this company post-dates the beginning of the requisite time periods for El Salvadoran TPS by over seven months. The record is absent of any corroborative evidence in support of the applicant's claimed continuous residence from April 1998 to October 2001.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has failed to establish that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is also noted that the applicant indicated on his TPS application that he had been under immigration proceedings as well; however, the applicant did not provide any evidence along with his application regarding such 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 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.