

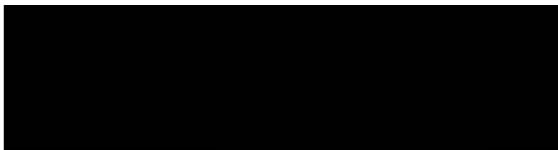
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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
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**U.S. Citizenship
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Services**

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FILE:

[EAC 01 18751391]

[EAC 07 260 51763, motion]

Office: VERMONT SERVICE CENTER

Date: APR 022008

INRE: Applicant:



APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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.P. Wiemann".
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vennont Service Center (VSC), denied the application. The Administrative Appeals Office (AAO) denied a subsequent appeal and a subsequent motion to reopen. The matter is again before the AAO on a motion to reopen. The motion is granted and the appeal will be sustained.

The applicant is a citizen of El Salvador who seeks 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. The director also found that the applicant had failed to establish his Salvadoran nationality. The AAO dismissed the appeal, finding that the applicant had established his nationality, but that he had not established his qualifying continuous residence and continuous physical presence. The AAO dismissed a subsequent motion to reopen, finding that the applicant had not overcome the issue on which the underlying decisions were based.

On motion, the applicant asserts that the additional evidence submitted establishes his qualifying continuous residence and continuous physical presence.

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 as 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 section 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 re-parole; or
 - (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 by the Secretary of Homeland Security, 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 on 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 reflects that the applicant filed a TPS application on April 23, 2001 - during the initial registration period for Salvadorans. On, September 23, 2004, the director requested that the applicant submit evidence to establish his Salvadoran citizenship, such as a copy of his birth certificate issued by the appropriate civil authority. The director also requested that the applicant submit documents to show his qualifying continuous residence and continuous physical presence. In response, the applicant submitted the following:

- The biographic page of his Salvadoran passport, issued in El Salvador, on July 28, 1998;
- A non-governmental Massachusetts identification card;
- A letter from [REDACTED] project manager at [REDACTED] at Tuft's University, dated October 4, 2004, stating that the applicant had worked 25 hours a week as a part-time custodian at that location since December 2, 1998;

- A pay stub from OneSource, dated January 16, 2003;
- Hospital discharge instructions, dated March 18, 2002;
- A letter from the East Boston Neighborhood Health Center, stating that the applicant had received care at the center beginning on February 19, 2003; and,
- A letter praising the applicant's honesty in returning a gold bracelet to its owner, dated January 22, 2003.

On November 8, 2004, the director denied the application, finding that the applicant had failed to establish that he is a national of El Salvador and that he had failed to establish his qualifying continuous residence and continuous physical presence.

On December 6, 2004, the applicant submitted an appeal. The applicant asserted that he did not keep his pay stubs from OneSource, Inc. and that the company was unable to provide him records before August 14, 2000. In support of his appeal, the applicant submitted the following:

- The biographic page of his Salvadoran passport, issued on October 1, 2003, in Boston, Massachusetts;
- The previously submitted letter from Project Manager, dated October 5, 2004, stating that the applicant had worked for OneSource Inc. since December 2, 1998;
- A computer screen printout, showing a hire date of the applicant of August 14, 2000;
- A surgery report, dated October 1, 2001;
- A 2001 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement; and,
- A 2001 IRS Form 1040A, U.S. Individual Income Tax Return.

On September 1, 2006, the AAO dismissed the appeal, finding that the applicant had established his Salvadoran nationality, but that the various documents submitted were not specific enough and were not, by themselves, persuasive evidence of his qualifying continuous residence or continuous physical presence. The AAO found that the letter from the applicant's employer, Dale Tunstall, could be given little evidentiary weight because it did not provide the address where the applicant resided during the applicant's employment, and that the letter was not supported by corroborative evidence, such as earning statements or paycheck stubs. The AAO also found that the computer printout submitted pre-dated the requisite time periods for continuous residence and continuous physical presence.

The applicant filed a motion to reopen the AAO's September 1, 2006, decision. In support of the motion, the applicant submitted the following documentation:

- 20001, 2002, 2003, 2004, and 2005 Forms W-2, from One Source Inc.; and,
- A computer printout showing continuous employment from December 2, 1998, through September 19, 2006, for employee **number** _____

On July 6, 2007, the AAO dismissed the motion, finding that the applicant failed to overcome the basis for the underlying decisions.

On July 30, 2007, the applicant submitted the current motion. On motion, the applicant submits the following:

- The previously submitted 2001 Internal Revenue Service (IRS) Form W-2;
- **11evious1Y** submitted computer printout showing continuous employment for employee number from December 2, 1998, through September 19, 2006; and,

- Pay stubs from OneSource Facility Services, Inc., dated January 25, 2001, through April 5, 2002, addressed to the applicant at [REDACTED] East Boston, MA, 02128, that indicate that the applicant's employee number was [REDACTED]

Based on this evidence, which directly addresses the previous deficiencies noted by the AAO, the AAO finds that the applicant has submitted evidence that establishes his qualifying continuous residence and continuous physical presence. Therefore, the AAO's September 1, 2006, dismissal of the motion is withdrawn and the motion is granted.

Along with the letter from the applicant's employer mentioned in the previous decision, these documents establish that the applicant continuously resided in the United States since February 13, 2001, and that he was continuously physically present in the United States since March 9, 2001. Consequently, the applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's decision to deny the application on these grounds will be withdrawn.

An alien applying for TPS has the burden of proving that he or she meets the requirements listed above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has met this burden.

ORDER: The motion is granted and the appeal is sustained.