

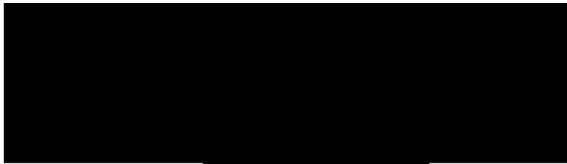


U.S. Citizenship
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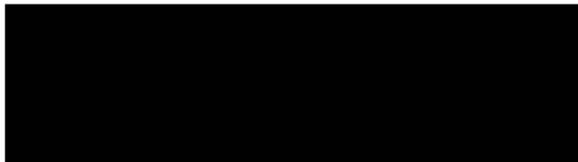


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 03 2009**
[SRC 01 204 55769]

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 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 determined that 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. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant has been continually present in the United States since his arrival in November 2000, but no longer has paperwork pertaining to his first months here. The applicant also submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period.

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 reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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 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 granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial TPS application on May 9, 2001.

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 United States Citizenship and Immigration Services (USCIS). 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 May 9, 2001. On March 24, 2008, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

1. Copies of statements from [REDACTED] and [REDACTED] with copies of medical bills attached.

2. A personal statement and a letter from Social Security Administration indicating the applicant had applied for a Social Security Card on September 28, 2001.
3. Copies of the applicant's Social Security Card and an Employment Authorization Card valid from March 7, 2008 to March 9, 2009, and a receipt for a State Identification Card dated August 8, 2008.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel states that the applicant has been continually present in the United States since his arrival in November 2000, but no longer has paperwork pertaining to his first months here. The applicant also submits evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submits a personal statement and a statement from [REDACTED] as well as various documents already part of the record.

According to [REDACTED] he treated the applicant on March 5, 2008 which means he can only attest to the applicant's presence in the United States since that date. [REDACTED] letter is addressed to a claims specialist requesting payment of the attached medical bills related to an injury of the applicant. The bills are dated March 20, 2008, May 31, 2008, June 19, 2008, and July 29, 2008. The letter from Social Security Administration states that the applicant applied for his Social Security card on September 28, 2001. Consequently, none of this evidence is probative in establishing the applicant's continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application.

In his personal statements, the applicant claims that he entered the United States in November 2000. The applicant provides a narrative of his arrival, entry and his life in this country since then. However, the applicant states that he has no documentation to support this claim. [REDACTED] states that she has known the applicant since 2003. Consequently, she can only attest to his presence in the United States since that time.

Counsel also appears to claim that because the applicant was previously approved for employment authorization he was able to submit evidence at the time demonstrating continuous residence and continuous physical presence in the United States. However, counsel incorrectly attributes the granting of employment authorization as approval of his TPS application. In fact, the applicant was granted employment authorization contingent on the approval of his TPS application. Once the TPS application was dismissed, the applicant was no longer eligible for this benefit.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.

The director notes in the November 21, 2008 decision that the applicant has established his nationality and identity. However, the only evidence provided by the applicant to establish his identity and nationality is a copy of a birth certificate with English translation. This document was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied on this basis as well.

It is also noted that a Federal Bureau of Investigation fingerprint results report indicates that the Seattle, Washington Police Department arrested the applicant on February 20, 2006 for "Municipalities Code Violation" and the Tukwila, Washington Police department arrested the applicant on March 24, 2007 for "Driving Without a License." The final dispositions for these arrests are not included in the record, nor were the final court dispositions requested. It is also noted that the applicant has failed to declare on his applications that he has ever been arrested. United States Citizenship and Immigration Services (USCIS) must address these arrests in any future 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.