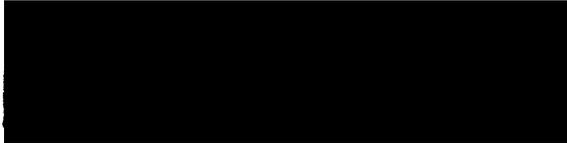


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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 12 2005**
[WAC 02 260 51636]

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel submits a brief and additional evidence.

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 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 § 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.
- (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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Pursuant to 8 C.F.R. § 244.9(2)(2)(i), an alien may submit employment records in the form of pay stubs, Internal Revenue Service W-2 Forms, certification of the filing of Federal, State, or local income tax returns, or letters from employers or, if the applicant has been self-employed, letters from banks and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters must include: the alien's address(es) at the time of employment; the exact period(s) of employment; period(s) of layoff, if any; and, the alien's duties with the company.

Pursuant to 8 C.F.R. § 244.9(a)(2)(v), an alien may submit attestations by churches, unions, or other organizations of the applicant's residence by letter. Such letters must identify the applicant by name; must be signed by an official whose title is also shown; must state the address where the applicant resided during the membership period; must include the seal of the organization impressed on the letter or be on the organization's letterhead; and, must establish how the attester knows the applicant and the origin of the information being attested to.

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. Subsequent extensions of the TPS designation have been granted, with the most recent validity granted 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 applicant submitted the following evidence in an attempt to establish continuous residence and physical presence with the Form I-821, Application for Temporary Protected Status:

1. an affidavit dated July 22, 2002 from [REDACTED], stating that he is married to the applicant's aunt, [REDACTED] and that the applicant has resided in his home at [REDACTED] Los Angeles, California, since his arrival in the United States in December of 2000; and,
2. an affidavit dated July 15, 2002, from [REDACTED] who states that the applicant is his nephew, and that he has personal knowledge that the applicant has lived with his sister, [REDACTED], at [REDACTED] Los Angeles, California, since December of 2000;

On February 14, 2003, the director issued a Notice of Intent to Deny addressed to counsel requesting additional evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time frames. Counsel, in response, provided the following evidence:

1. an affidavit dated March 10, 2003, from [REDACTED] stating that the applicant is his friend, and that he and the applicant both worked for [REDACTED] a sub-contractor, as painters beginning in January 2001;
2. an affidavit dated March 7, 2003, from [REDACTED] who states that she is a friend of the applicant's aunt, and that she has personal knowledge the applicant has lived at [REDACTED] Los Angeles, California, since his arrival in the United States in December of 2000;

3. a Los Angeles Police Department form, Preliminary Investigation of Stolen Property, dated December 29, 2001, relating to the applicant's report of a lost Salvadoran passport; and,
4. two bills from Centro Hispanico in Los Angeles, California, for notarized letters dated July 18 and July 25, 2002.

On November 10, 2003, the director issued a second Notice of Intent to Deny requesting additional evidence of the applicant's qualifying continuous residence and continuous physical presence in the United States. Counsel, in response, submitted the following:

1. an affidavit dated December 9, 2003, from [REDACTED] stating that the applicant is her brother, and that he has lived with their aunt [REDACTED] at [REDACTED] Los Angeles, California, since his arrival in the United States in December of 2000; and,
2. an affidavit dated December 9, 2003, from Maria Alvarado stating that the applicant is her son and that he has lived with his aunt [REDACTED], Los Angeles, California, since his arrival in the United States in December of 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on December 22, 2003.

On appeal, counsel asserts that the applicant has provided affidavits, signed under the penalty of perjury, that qualify as "any other relevant document" for the purpose of establishing continuous residence and continuous physical presence under 8 C.F.R. § 244.9(a)(2)(vi)(L). Counsel cites the holding reached in *Vera-Villegas v. INS*, 330 F.3d 1222 (9th Cir. 2003). Counsel states that in *Vera-Villegas v. INS*, "[t]he court held that the petitioner for suspension of deportation established seven years of continuous physical presence in the United States even though he lacked contemporaneous documentation of his presence." Counsel further quotes *Vera-Villegas v. INS* as follows: "[a]n alien's lack of documentary evidence, such as a lease, insurance bill, or tax return, to prove his physical presence in the United States is not an adequate basis for rejecting the alien's application for [relief] if the . . . written testimony is otherwise sufficient." Counsel contends that it is unreasonable to expect the applicant to have begun accumulating contemporaneous documentation of his arrival in the United States in order to meet the continuous residence and continuous physical presence requirements to qualify for TPS. Finally, counsel asserts that the affidavits submitted by the applicant are relevant, consistent, credible, and probative, and are sufficient to meet the regulatory standard at 8 C.F.R. § 244.9(a)(2).

The holding reached in *Vera-Villegas v. INS* is not pertinent to the reasons for denial in this proceeding. Suspension of deportation pertains to a different procedural process relative to the removal of an alien from the United States, and is governed by 8 C.F.R. § 240.65. The regulation at 8 C.F.R. § 240.65 does not impose any specific evidentiary requirements to establish that the alien has been continuously physically present in the United States for a period of seven years immediately preceding the date the application for suspension of deportation was filed. The regulation at 8 C.F.R. § 244.9 lists the following as acceptable evidence of continuous residence and continuous physical presence in the United States during the requisite time periods: employment records;

rent receipts, utility bills, receipts, or letters from utility companies showing the dates during which the alien received service; school records; hospital or medical records; attestations by churches, unions, or other organizations of which the applicant has been a member; money order receipts; passport entries; birth certificates of children born in the United States; bank books with dated transactions; correspondence between the applicant and other persons or organizations; social security card; selective service card; automobile license receipts, title, or vehicle registration; deeds, mortgages, or contracts to which the applicant has been a party; tax receipts; insurance policies, receipts, or letters; and, any other relevant document.

Further, in *Vera-Villegas v. INS*, the petitioner for suspension of deportation presented several witnesses, who under oath, in court, attested to their personal knowledge of the petitioner's presence in the United States and their convincing attestations as to the circumstances surrounding their knowledge of his presence. The proceedings were suspension of removal [deportation], not the adjudicative finding under a temporary protected status application.

The applicant claims to have lived in the United States since December 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these affidavits for the period prior to December 29, 2001, the date of the applicant's report of his lost passport to the Los Angeles Police Department; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). While affidavits of witness from friends, acquaintances, or family members may be given some consideration under the provision of 8 C.F.R. § 244.9(a)(2)(vi)(L) as "any other relevant document," the documentation submitted by the applicant is not sufficient to establish that he 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.

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.