

PUBLIC COPY



**U.S. Citizenship
and Immigration
Services**

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



MI

FILE:



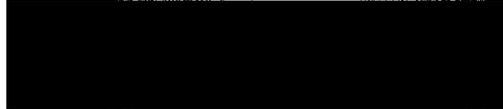
Office: Vermont Service Center

Date: JUL 25 2005

[EAC 01 206 54161]

IN RE:

Applicant:



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.

Cindy N. Gomez 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 failed to provide requested evidence establishing that he was a citizen or national of El Salvador, that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that he is submitting additional evidence into the record.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

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.

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. An extension of the designation for El Salvadorans TPS was granted by the Attorney General through 2003. Subsequent extensions have been granted by the Secretary of the Department of Homeland Security, with the latest extension valid through 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).

On December 4, 2003, the applicant was requested by the director to submit evidence establishing that he was a citizen or national of El Salvador. The applicant was also requested to provide evidence establishing his continuous residence in the United States since February 13, 2001, as well as his continuous physical presence since March 9, 2001. The record indicates the applicant failed to respond to the director's request.

The director determined that the applicant had failed to submit the requested evidence and denied the application on March 15, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

1. A photocopy of a page from the applicant's El Salvadoran passport;
2. Photocopies of Gigante Express money transfers from the applicant in Alexandria, Virginia, to a relative in El Salvador, which carry the following dates: February 24, 2002, April 5, 2002, May 5, 2002, May 8, 2002, November 17, 2002, August 2, 2003, and September 2, 2003;
3. An affidavit from [REDACTED], Arlington, Virginia, who attests to the applicant having worked for his company as a carpenter since August 2001; and
4. An affidavit from [REDACTED] who states that, based on his personal knowledge, the applicant entered the United States on March 2000 and has been continuously residing in this country since that time.

In addition, the applicant states on appeal that he failed to receive the Service's notice of intent to deny. However, the record indicates that the notice of intent was mailed to the same address as that used by the applicant himself on his subsequently-submitted Form I-290B Notice of Appeal. Nor is there any evidence in the record that the notice was ever returned to the Service as undeliverable.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). Much of the supporting evidence provided by the applicant on appeal is lacking basic and necessary information and, as such, falls far short of containing what such documents should include in order to render them probative for the purpose of establishing an applicant's continuous residence and physical presence in the United States. The employment affidavit from [REDACTED] does not provide the applicant's addresses during his period of employment; nor does it conform with the requirements of 8 C.F.R. § 244.9(b). According to the acquaintance affidavit from [REDACTED] the affiant bases his knowledge of the applicant's entry into the United States and of the applicant's continuous residence and continuous presence in the United States on "personal knowledge," without providing further details or specifics as to the basis for that knowledge. It is also noted that the applicant claims to have lived in the United States since March 2000. As such, it is reasonable to expect that, in addition to photocopied money transfers, he would have additional contemporaneous evidence to support his application; however, no such evidence has been provided.

The applicant, on appeal, has complied with the director's request to submit evidence establishing that he was a national of El Salvador. However, the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.