

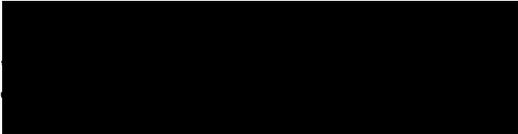


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

MI



FILE: [REDACTED]
[EAC 03 050 51578]

Office: VERMONT SERVICE CENTER

Date: JUL 29 2005

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.

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 establish that he had: 1) continuously resided in the United States since February 13, 2001; 2) been continuously physically present in the United States since March 9, 2001; and 3) that Rene Lopes and Cristian Umana-Castellon are the same person.

On appeal, the applicant asserts his claim of eligibility for TPS.

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.

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 TPS designation has been granted with validity 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 documentation with his initial TPS application:

1. A copy of an earnings statement from the Millennium Group Inc. for the pay period ending October 8, 2000, and bearing the name [REDACTED]

On February 25, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States as well as documentary evidence showing that [REDACTED] and [REDACTED] are the same person. The applicant, in response, provided the following documentation:

2. A copy of a letter from [REDACTED] of Festival, Inc. in which he stated that the applicant, [REDACTED] had been employed with the company for approximately two years as a dishwasher under the name [REDACTED] [REDACTED] the same person.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 24, 2004.

On appeal, the applicant reasserts his claim of eligibility for TPS and contends that Rene Lopes and he are the same person. The applicant submits the following documentation:

3. Pay stubs all bearing the name [REDACTED] and covering the period from December of 2000 through May of 2001.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001. There has been no evidence submitted by the applicant that bears his name or address. All evidence submitted bears the name [REDACTED]. Although the applicant contends that he and [REDACTED] are the same person, there has been no independent documentary evidence submitted to substantiate that claim. The employment letter from Festival, Inc. has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form, the writer's title is not indicated, the letter does not appear to have been written on company stationery, and it does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the specific dates in which the applicant was employed.

The applicant claims to have lived in the United States since May of 2000. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim of eligibility for TPS; 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). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Nor is the documentation submitted sufficient to demonstrate that [REDACTED] are the same person. Consequently, the director's decision to deny the application for temporary protected status 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.