

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

MI

FILE:

Office: VERMONT SERVICE CENTER

Date: JUL 29 2005

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.

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 (AAO) 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 his qualifying continuous residence in the United States during the requisite time period.

On appeal, the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

Persons applying for TPS offered to El 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. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on September 10, 2003.

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was

the spouse or child of an alien currently eligible to be a TPS registrant, and had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In support of his initial Form I-821, the applicant submitted documentation including the following:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. A photocopy of the identification page from his El Salvadoran passport, issued in Boston, Massachusetts, on April 7, 2003;
3. An unsigned letter, dated August 29, 2003, from [REDACTED] pastor of the Most Holy Redeemer Parish, East Boston, Massachusetts, stating that the applicant had been a member of the parish since December 2000;
4. Photocopies of rent receipts;
5. An affidavit, dated October 15, 2003, from his aunt, [REDACTED] stating that the applicant arrived in the United States in December 2000;
6. A letter, dated September 4, 2003, from [REDACTED] stating that she has known the applicant since his arrival in the United States in January 2001;
7. A letter, dated September 5, 2003, from [REDACTED] stating that the applicant has resided with his (the applicant's) mother since January 2001;
8. A photocopy of an Employment Authorization Document (EAD) issued to his mother, [REDACTED] and, [REDACTED];
9. A photocopy of a Citizens Bank account statement for the period May 9, 2003 through June 30, 2003.

On October 3, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant provided the following additional documentation:

10. A photocopy of a CIS Notice of Action indicating that his mother was granted TPS on February 12, 2003;
11. A photocopy of an affidavit, dated October 16, 2003, from [REDACTED] stating that he has known the applicant since May 2002;
12. A photocopy of an affidavit, dated October 15, 2003, from [REDACTED] stating that he has known the applicant since December 2000; and,
13. A photocopy of a Citizens Bank account statement for the period July 1, 2003 through September 30, 2003.

The director determined that the documentation provided was not sufficient to establish the applicant's qualifying continuous residence in the United States during the requisite time period. The director denied the application on November 21, 2003.

On appeal, the applicant submits the following additional documentation:

14. An affidavit, dated December 17, 2003, from [REDACTED] stating that he has known the applicant since January 2001; and,
15. An affidavit, dated December 17, 2003, from [REDACTED] stating that he has known the applicant since February 2001.

The applicant claims to have entered the United States on December 28, 2000. It is reasonable to assume that he would have a variety of corroborative evidence to support this claim. The letters and affidavits provided by the applicant from a relative and acquaintances (Nos. 5, 6, 7, 11, 12, 14, and 15, above) are not, by themselves, persuasive evidence of qualifying continuous residence and continuous physical presence. The letter from [REDACTED] No. 3) has little evidentiary weight or probative value as it is unsigned and is not supported by corroborative evidence of the specific date that the applicant was registered as a parishioner at the church. Nos. 2, 9, and 13 are all dated well beyond the dates required for establishing qualifying continuous residence and continuous physical presence.

A review of the alien registration file relating to the applicant's mother reflects that at the time of filing her initial TPS application on March 23, 2002, and at the time of filing applications for annual re-registration on September 9, 2002, August 8, 2003, and January 24, 2005, she indicated that she had three children, including the applicant, all of whom were residing in El Salvador. In connection with her initial Form I-821, the applicant's mother submitted photocopies of rent receipts for an apartment at [REDACTED] East Boston, Massachusetts. Those receipts, issued to her for monthly rent of \$400, included, for examples:

- Receipt # [REDACTED] dated February 20, 2001, for rent from January 20, 2001, to February 20, 2001; and,
- Receipt # [REDACTED] dated November 20, 2001, for rent from October 20, 2001, to November 20, 2001.

The applicant also submitted photocopies of rent receipts (No. 4, above) for the same apartment. Those receipts, issued to him for monthly rent of \$350, include, for examples:

- Receipt # [REDACTED] dated February 1, 2001, for rent from February 1, 2001, to February 29, 2001; and,
- Receipt # [REDACTED] dated November 1, 2001, for rent from November 1, 2001, to November 30, 2001.

Based on a review of the above, the applicant's mother indicated that the applicant was in El Salvador during the time periods required to establish qualifying continuous residence and continuous physical presence. Furthermore, both the applicant and his mother submitted generic, hand-written rent-receipts covering the same periods of time for the same apartment. These discrepancies have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence

offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is concluded that the documentation submitted by the applicant is not credible and is not sufficient to establish that he satisfies the continuous residence requirement described in 8 C.F.R. §§ 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has failed to establish his qualifying continuous physical presence in the United States since March 9, 2001. Therefore, the application may also not be approved for this reason.

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.