

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

[REDACTED]

FILE: [REDACTED]
[EAC 02 002 53180]

Office: VERMONT SERVICE CENTER

Date: JUN 08 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:

[REDACTED]

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 determined the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits 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 in the United States since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 by the Secretary of the Department of Homeland Security, with the latest 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 meets the above requirements. Applicants must submit all documentation as required in the instructions or requested by 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).

The applicant properly filed his initial TPS application on September 4, 2001. In support of his application, the applicant submitted the following documentation;

1. A photocopy of his El Salvador birth certificate, with English translation;
2. A photocopy of a receipt from [REDACTED] Huntington, New York, containing a hand-written date of May 30, 2000; and,
3. A partially illegible photocopy of a Traveler's Express International Money Order Purchaser's Receipt, dated February 18, 1999.

On February 12, 2003, and again on May 1, 2003, the applicant was 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 submitted:

4. A letter, dated May 19, 2003, from [REDACTED] that the applicant had been a tenant in his home since January, 2000.

The director determined that the documentation provided was not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on July 10, 2003.

On appeal, the applicant submits the following additional documentation:

5. A letter, dated July 18, 2003, from the [REDACTED] Hauppauge, New York, stating that the applicant had been employed from March 2000 to May 2002;
6. A letter, dated July 21, 2003, from [REDACTED] Commack, New York, stating that the applicant had been an employee of the company since May 2000;
7. An undated letter from [REDACTED] Brentwood, New York, stating that the applicant had been a customer for the past three years; and,
8. An affidavit, dated July 21, 2003, from [REDACTED] stating that the applicant has resided in the United States since 1999.

The applicant claims to have continuously lived in the United States since February 10, 2001. It is reasonable to expect that he would have a variety of credible, objective evidence to support this claim. Nos. 2, 3, 4, 7, and 8, above have little evidentiary weight or probative value. The hand-written date on No. 2 appears to have been altered. No. 3 is partially illegible. No. 4 is not supported by corroborative evidence such as rent receipts or bank statements showing the applicant's rent payments. No. 7 is undated and also is not supported

by receipts showing the applicant's dates of purchases at the store. Furthermore, No. 8, by itself, is not persuasive evidence of residence and physical presence.

No. 5 indicates that the applicant was employed by the [REDACTED] from March 2000 to May 2002, while No. 6 indicates that he was employed by [REDACTED], beginning in May 2000. Neither document is supported by corroborative evidence, such as pay stubs or employment records, and neither provides the basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letters are not in the form of affidavits and do not provide the address where the applicant resided during the period(s) of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties with the companies.

It is concluded that 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.