

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



M 4

FILE:



[EAC 02 258 51551]

Office: Vermont Service Center

Date:

JUN 14 2005

IN RE:

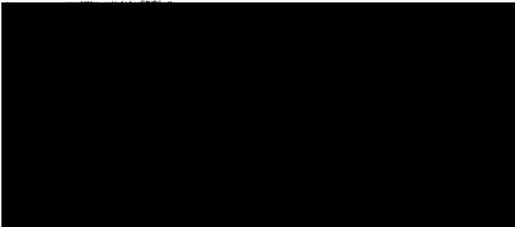
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 M. Gorman 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 establish he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts that the applicant has submitted sufficient evidence to establish his 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.

On March 9, 2001, the Attorney General designated El Salvador (66 Federal Register 14214) for Temporary Protected Status (TPS). Subsequent extensions of the TPS designation have been granted, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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.

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 July 9, 2003, 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. The applicant, in response, provided affidavits from four acquaintances.

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

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

1. an affidavit from [REDACTED] who states that the applicant has attended Adventist Church of the Seventh Day in Washington, DC, since July 1998;
2. an affidavit from [REDACTED] who states that the applicant has worked for him at L&L Welding in [REDACTED] since September 2002;

3. affidavits from his half-brother and from four acquaintances relating to the applicant's residence and physical presence in the United States; and,
4. a personal affidavit in which the applicant testified that he "lived with relatives in Texas from July 1998 to December 1998."

Counsel explains on appeal that the applicant has conducted all transactions in the United States in cash and, therefore, has no evidence of his eligibility for TPS aside from the affidavits detailed above. Counsel asserts that 8 C.F.R. § 244.9(a) "permits the submission of affidavits" in support of an application. However, the only types of affidavits listed as acceptable evidence of an alien's continuous residence and continuous physical presence in the United States at 8 C.F.R. § 244.9(a)(2) are: affidavits supplied by employers; affidavits supplied by organizations with which a self-employed alien has done business; and, affidavits supplied by officials of organizations of which the applicant has been a member. Contrary to counsel's assertion, the regulation at 8 C.F.R. § 244.9(a)(2) does not list affidavits from friends, acquaintances, or family members as acceptable evidence of continuous residence and continuous physical presence during the requisite time frames. While such affidavits 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 evidentiary standard set forth at 8 C.F.R. § 244.9(a)(2) clearly gives greater evidentiary weight to contemporaneous documents as proof of an alien's continuous residence and physical presence in the United States during the requisite time frames.

Counsel is correct in his assertion that 8 C.F.R. § 244.9(a)(2)(v) specifically states that "attestations by churches" may be accepted in support of an applicant's claim. However, the regulations do not suggest that such an attestation, alone, is necessarily sufficient to establish an applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, it is significant to note that [REDACTED] asserted (in No. 1 above) that the church "records show that [the applicant] has been a member of our Church [in Washington, D.C.] since July 1998...our information/records show that [he] has been attending our Church no less than two times a month since the above date;" this statement directly contradicts the applicant's personal testimony (in No. 4 above) where he states that he "lived with relatives in Texas from July 1998 to December 1998." Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancy.

As the applicant claims to have lived in the United States since 1998, it is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the affidavits he has provided. 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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It also is noted that the applicant was ordered removed in absentia on December 9, 1998, at Arlington, Virginia, based upon his apprehension at Brownsville, Texas, on May 9, 1998.

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.