

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

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

**PUBLIC COPY**



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

MJ

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: **MAR 07 2005**  
[EAC 02 148 51256]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 had failed to establish that he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits additional evidence.

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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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).

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The record shows that the applicant filed his TPS application on March 29, 2002. On August 6, 2002, the applicant was requested to submit: (1) evidence to show that he has continuously resided in the United States since February 13, 2001; and (2) the final court disposition of his arrest on February 24, 1998, in Hyattsville, Maryland, for assault in the first degree (3 counts); resisting arrest; and disorderly in a public place.

In response, the applicant provided evidence in an attempt to establish continuous residence in the United States, and the final court disposition of his arrest indicating that the applicant's case (Case No. [REDACTED]) was heard in the District Court of Maryland, Prince George County, on May 20, 1998, and that the court entered a "nolle prosequi" on the charges for theft, 3 counts of assault in the second degree, and resisting arrest. The disposition of the charge for disorderly in a public place shows "STET." Disorderly in a public place in the State of Maryland is a misdemeanor offense. Therefore, this one misdemeanor offense does not render the applicant ineligible for TPS based on criminal issues under section 244(c)(2)(B)(i) of the Act.

The director, in his decision, noted that the applicant furnished "plenty of documents to substantiate your residence during 1998, 1999 and after March 2002. However, you have failed to submit any proof of residence in the United States for the required time frame of February 13, 2001, through March 29, 2002."

On appeal, the applicant submits:

- (1) Copies of 1999, 2000, and 2001 W-2 Wage and Tax Statements issued by Karon Masonry, Inc. (address of applicant: [REDACTED])

- (2) A copy of 1999 W-2 Wage and Tax Statement issued by Structural Preservation Systems (address of applicant: [REDACTED])
- (3) Copies of 1999, and 2000 Form 502, Maryland Tax Returns (address of applicant: [REDACTED])
- (4) Copy of 2001 Form 502, Maryland Tax Return (address of applicant: [REDACTED])
- (5) A copy of Maryland tax refund for tax year 1999 in the amount of \$1,459 issued on February 28, 2001, to Taxpayer ID Number [REDACTED]
- (6) A copy of Maryland tax refund for tax year 2000 in the amount of \$779 issued on March 7, 2001, to Taxpayer ID Number [REDACTED]
- (7) Copies of pay-stubs issued by Karon Masonry, Inc. for pay periods March 5, 2001 to March 10, 2001, and for February 11, 2002 to February 16, 2002.
- (8) A copy of an envelope addressed to the applicant at [REDACTED] Maryland, postmarked January 7, 2002.
- (9) A copy of a department store receipt for a layaway dated March 18, 2002.
- (10) A copy of the State of Maryland Learner's Permit issued on June 21, 2002.

The tax documents (listed in Nos. 1, 2, 3, 4, 5, 6, and 7 above) list the Social Security Number as [REDACTED]. The Forms 502, Maryland Tax Returns (Nos. 3 and 4 above) show that the applicant claimed he is married and has two dependent children [REDACTED] and [REDACTED]. This information contradicts the information contained in the Form I-821 TPS application and TPS re-registrations filed by the applicant. The applicant's Form I-821 filed on March 29, 2002, shows that the applicant claims no spouse or children, and that a Social Security Number was "Not Issued." The Forms I-821 re-registrations filed on November 12, 2002, and on September 15, 2003, both show that the applicant claims no spouse or children, and that his Social Security Number is [REDACTED].

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

As provided in 8 C.F.R. § 244.9(b), the sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

The applicant has not submitted sufficient credible evidence to establish his continuous residence in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS 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.