

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

M1

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: MAR 29 2008

[EAC 01 213 50698]

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 denied the application because the applicant failed to establish his qualifying continuous residence in the United States during the requisite time period.

On appeal, counsel for the applicant submits a brief statement and an affidavit from the applicant.

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. 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 Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 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 TPS application, the applicant submitted:

1. A photocopy of his birth certificate, with English translation; and,
2. A hand-written letter from [REDACTED] president of Triple H. Contracting, Hauppauge, New York, dated March 12, 2001, stating that the applicant had been employed for approximately three years. Mr. [REDACTED] further stated that during his three-year employment, the applicant had left the company for approximately six months.

On September 11, 2002, the applicant was requested to submit evidence to establish his qualifying continuous residence in the United States during the requisite time period. In response, the applicant submitted:

3. A second letter from [REDACTED] dated November 19, 2002, on letterhead stationary, indicating that Triple H. Contracting, Inc., Sharptown, New York, had employed the applicant for three years.
4. A photocopy of a New York State Department of Motor Vehicles interim identification card, dated September 20, 2001;
5. A photocopy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, indicating that the applicant earned \$3,960.00 in 2001;
6. Photocopies of Triple H. Contracting, Inc. statements for the one-week pay periods ending August 17, 2001; August 24, 2001; September 14, 2001; October 19, 2001; November 30, 2001; December 7, 2001; December 14, 2001; December 21, 2001; December 28, 2001; January 4, 2002; February 15, 2002; March 28, 2002; April 12, 2002; May 25, 2002; July 20, 2002; August 24, 2002; and, November 14, 2002;
7. A photocopy of an earnings statement from The Spare Rib, Inc., for the one-week pay period ending January 20, 2002, indicating that the applicant was hired on December 18, 2001;
8. A photocopy of a prescription issued to the applicant by Southside Hospital, Bay Shore, New York, on April 3, 2002; and;
9. A photocopy of a patient discharge summary from Southside Hospital, Plainview, New York, dated April 3, 2002.

The director noted inconsistencies in the record and that all of the evidence submitted by the applicant was dated between August 2001 and November 2002. The director concluded that the applicant had failed to establish his qualifying continuous residence in the United States since February 13, 2001, and denied the application on June 6, 2003.

On appeal, counsel for the applicant asserts that the director legally and factually erred in denying the application, and that the applicant is prima facie eligible for TPS. In support of the appeal, counsel submits an affidavit from the applicant explaining that prior to obtaining employment authorization in August 2001, he worked "off the books."

The applicant claims to have resided in the United States since an unspecified date in 1996. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The employment letters from [REDACTED] (Nos. 2 and 3, above) have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, they are not in the form of affidavits and do not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's duties with the company. Based on the gross wages indicated in No 5, the applicant does not appear to have worked for Triple H. Contracting throughout 2001. The evidence contained in No. 6 establishes only that the applicant was employed by that company periodically from August 2001 through November 2002, and the evidence contained in Nos. 4, 7, 8, and 9, is dated after the date required to establish continuous residence.

Furthermore, although [REDACTED] employment letters are dated more than one year and eight months apart, he claims in each that the applicant had been employed for three years. This discrepancy has not been explained satisfactorily and calls 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 visa petition. It is incumbent on the petitioner 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).

Based on a review of the record, it is concluded that the documentation submitted is not sufficient to establish that the applicant satisfies the continuous residence requirements 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.

It is noted that, beyond the decision of the director, the applicant has also not submitted sufficient evidence to establish that he satisfies the continuous physical presence requirements described in 8 C.F.R. § 244.2(c). 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.