

identifying data deleted to  
prevent ~~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



**M**

**MAY 02 2005**

FILE: [REDACTED]  
[EAC 01 199 52422]

Office: VERMONT SERVICE CENTER

Date:

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 and continuous physical presence in the United States during the requisite time periods.

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

It is noted that the record contains two completed Forms G-28, Notice of Entry of Appearance of Attorney or Representative. Both forms appear to have been signed by [REDACTED]. On one form, dated April 2, 2003, [REDACTED] indicates that she is associated with [REDACTED] Bay Shore, New York, and that she is an accredited representative. The other form, dated August 26, 2003, indicates that Ms. [REDACTED] is associated with Alisandra Multiservices, Inc., Bay Shore, New York, and that she is a paralegal representative. However, Ms. [REDACTED] is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to 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. 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 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, filed on May 17, 2001, the applicant submitted photocopies of his 2002 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, from Bayshore Food Corp., Central Islip, New York, indicating wages of \$4,058.46. The applicant's social security number on the form is noted as [REDACTED]

On June 4, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted a letter, dated June 22, 2003, from [REDACTED] identified as the general manager of the International House of Pancakes (IHOP), Bay Shore, New York, stating that the applicant had been employed there since January 2000.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on October 17, 2003.

On appeal, the applicant submits the following additional documentation:

1. A letter, dated October 30, 2003, from a co-worker/acquaintance, [REDACTED] stating that the applicant has resided in the United States continuously since February 2001;
2. A photocopy of a 2002 IRS Form 1098-T, Tuition Payments Statement, issued to the applicant by [REDACTED] Brentwood, New York, on which the applicant's social security number is noted as [REDACTED] and,
3. Photocopies of room rental receipts, dated March 1, 2001; April 1, 2001; and, May 1, 2001.

The applicant claims to have continuously lived in the United States since July 2000. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim; however, the only documentation submitted that is dated within the required time periods are generic, hand-written rent receipts (No. 3, above). The letter from [REDACTED] is not, by itself, persuasive evidence of qualifying continuous residence and continuous physical presence. The 2002 Forms W-2 and 1098-T are dated one year beyond the dates required to establish qualifying continuous residence and continuous physical presence. The employment letter from Ms. [REDACTED] has little evidentiary weight or probative value as it does not provide basic

information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any).

Furthermore, there are discrepancies noted in the documentation presented pertaining to the applicant's use of a social security number. The 2002 Form W-2 indicates the applicant's social security number as [REDACTED] while the 2002 Form 1098T indicates his social security number as [REDACTED]. 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. 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).

Based on a review of the record, 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.