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

identifying data deleted to
prevent [illegible] warrante
invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

MAY 0 2 2005

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
[EAC 02 282 52811]

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 claims to be 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, counsel for the applicant submits a brief and a statement 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 pubic 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 September 6, 2002, the applicant submitted:

1. A photocopy of an El Salvadoran birth certificate for Fidel Angel Caceres, with English translation;
2. A photocopy of a 1998 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, issued to Fidel A. Quintanilla by Charlotte Contracting Dry-Wall Carolinas, Inc., Charlotte, North Carolina; and,
3. Photocopies of a 2001 IRS Form W-2 issued to Fidel A. Quintanilla by Precision Walls, Inc., Raleigh, North Carolina.

On August 14, 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:

4. An affidavit, dated August 25, 2003, from Precision Walls, Inc., Charlotte, North Carolina, stating that [redacted] had worked for the company from June 28, 2001 to August 19, 2002;
5. A letter, dated August 27, 2003, from [redacted], stating tha[redacted] had been employed since November 7, 2002;
6. A letter, dated August 25, 2003, from State Farm Insurance, Charlotte, North Carolina, stating tha[redacted] a had been insured from September 5, 2001, until he cancelled his policy on October 23, 2002; and,
7. Letters, dated September 5, 2003, from [redacted] ar[redacted] Charlotte, North Carolina, stating that the applicant had lived in their home from February 2000 to May 2002.

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, counsel for the applicant submits a brief and a statement from the applicant asserting that the applicant has maintained continuous residence and continuous physical presence in the United States since February 13, 2001.

The applicant claims to have continuously lived in the United States since October 1997. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support this claim. Letters from acquaintances (No. 7, above) are not, by themselves persuasive evidence of continuous residence and continuous physical presence. No. 2 is dated before the dates required to establish qualifying continuous residence and continuous physical presence and Nos. 5 and 6 are dated beyond the required qualifying dates. While No. 3 indicates that the applicant was physically present in the United States at some point in 2001, No 4 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, the period(s) of layoff (if any), and the applicant's duties with the company.

There are discrepancies encountered in the evidence presented pertaining to the applicant's use of a social security number. On his initial Form I-821, the applicant indicated that he had never used a social security number. However, No. 5 indicates that the applicant used social security numbe and Nos. 3 and 4 indicate the applicant used social security number 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 visa petition. Further, 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 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.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his identity and nationality. The birth certificate submitted by the applicant shows the name of Fidel Angel Caceres. There is no explanation or evidence contained in the record to establish that Fidel Angel Caceres and the applicant are the same person. Therefore, the application must also be denied due to the applicant's failure to establish his identity as a citizen of El Salvador.

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.