

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[WAC 02 044 50935]

Office: VERMONT SERVICE CENTER

Date: **NOV 03 2005**

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:



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 (VSC), and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a 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 statement.

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.

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 El Salvadorans was from March 9, 2001, through September 9, 2002. 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, with the latest extension valid 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).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, with the California Service Center (CSC) on November 6, 2001. On his Form I-821, the applicant indicated that he resided in Los Angeles, California. In support of the application, the applicant submitted a photocopy of his El Salvadoran birth certificate, with English translation.

On July 3, 2002, the director of the CSC requested the applicant 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 July 10, 2002, signed by him, indicating that he continued to reside in Los Angeles, California. He also submitted a letter, dated March 5, 2002, from Fr. Robert F. Hennessey,

pastor of the Most Holy Redeemer Parish in East Boston, Massachusetts, stating that the applicant resided in East Boston, Massachusetts, and had been a member of the congregation for two years.

On January 22, 2004, the director of the VSC requested the applicant, at his address in Massachusetts, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, counsel for the applicant submitted generic rent receipts for January through December 2001, and a letter, dated February 8, 2004, from the Animal Kingdom Zoo, Bordentown, New Jersey, stating that the applicant had been an employee since February 13, 2001.

The director of the VSC noted the address discrepancies in the documentation provided by the applicant. The director concluded that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods and denied the application on March 24, 2004.

On appeal, counsel asserts that the applicant has resided in the United States continuously since June 1996, has been working as a groom and stable worker since before February 13, 2001, and travels to different racetracks or stables throughout the country according to the racetrack schedule. Counsel states that the applicant never resided in Los Angeles, but had paid an individual who was based in Los Angeles to prepare and submit his Form I-821. In addition, counsel states that during 2001, the applicant worked for the Animal Kingdom Zoo in Bordentown, New Jersey, but was assigned to the Suffolk Downs Racetrack in Revere, Massachusetts.

The applicant claimed on his Form I-821 to have entered the United States without inspection on April 15, 1999. It is reasonable to expect that he would have a variety of credible, contemporaneous evidence to support his claim of continuous residence and continuous physical presence in the United States from the dates required to the date of filing his TPS application on November 6, 2001.

The employment letter 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 specific duties with the company. The employment information is also not supported by company payroll records or earnings statements. Similarly, the church letter has little evidentiary weight or probative value as it does not provide the specific date that the applicant was officially registered as a parishioner at the church. Furthermore, the generic rent receipts are not supported by objective evidence, such as a lease agreement or utility bills.

The discrepancies regarding the applicant's claimed residence have not been satisfactorily explained and call into question the applicant's ability to document the requirements under the statute and regulations. Part 5 of the Form I-821 does not indicate that anyone other than the applicant prepared and submitted his TPS application. Furthermore, the record contains letters from the applicant, signed by him in July 2002, indicating a California address. 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. Further, 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 applicant has not submitted sufficient credible evidence 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 these reasons will be affirmed.

Beyond the decision of the director, the applicant has not submitted an identity document bearing his photograph and/or fingerprint, as required under the provisions of 8 C.F.R. § 244.9(a)(1). The application must also be denied for this reason.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.