

Director of Operations
U.S. Citizenship and Immigration Services

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



U.S. Citizenship
and Immigration
Services

FILED

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: NOV 07 2005
[EAC 02 150 52715]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened on motion, and denied again 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 failed to establish that he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his claim of eligibility for TPS.

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 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. An extension of the TPS designation has been granted 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).

The applicant initially submitted along with his TPS application the following documentation:

1. A letter from [REDACTED] in which he stated that he has known the applicant since January 15, 2000, when the applicant came to the United States.

On March 6, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant, in response, provided the following documentation:

2. An affidavit from [REDACTED] in which she stated that the applicant lived at her house at [REDACTED] East Boston, Massachusetts, from July 1, 2000, to June 30, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 19, 2004.

The applicant filed his appeal on April 28, 2004 which was later than the prescribed period of 33 days. The director rejected it as an appeal and treated it as a Motion to Reopen. On motion, the applicant submitted the following documentation:

3. A letter from the district manager of [REDACTED], in which he stated that the applicant had been employed by their company in Cambridge, Massachusetts, as a full-time worker from September 15, 2000, to June of 2003.

On July 19, 2004, the director again denied the application and affirmed the initial decision.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

4. An affidavit from [REDACTED] in which he states that he has known the applicant since November of 2000 in that the applicant frequented his beauty salon for haircuts until 2002 when the business was sold, and that the applicant has assisted him in the opening of his new flower shop;
5. An affidavit from the manager of [REDACTED] in which he states that the applicant had been employed by the company as a cook from 2000 to September of 2003; and,
6. A copy of an earnings statement from [REDACTED] dated January 12, 2003, and bearing the applicant's name as employee and his East Boston, Massachusetts, address.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. The employment affidavits from [REDACTED] 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, the information concerning the applicant's period of employment is inconsistent and the affiants do not provide the address where the applicant resided during the period of his employment. It is further noted that the applicant only submitted one earnings statement dated January 12, 2003, which is insufficient to corroborate the statements made by the Bistro's representatives, and is dated beyond the requisite time period.

There has been no corroborative evidence submitted to support the statements made by [REDACTED] regarding the applicant's claimed presence in the United States since January of 2000. The applicant claims to have been present in the United States since January 15, 2000. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, insufficient evidence has been provided. The affiant has not demonstrated that his knowledge of the applicant's presence in the United States is independent of what the applicant told him about his entry into the United States. If not, then this statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States. Moreover, affidavits are only specifically listed as acceptable evidence for proof of employment, and attestations by churches, unions, or other organizations of the applicant's residence as described in 8 C.F.R. §244.9(2)(a)(i) and (v).

Mr. [REDACTED] stated in his affidavit (No. 4 above) that the applicant is a friend, has frequented his beauty salon for haircuts, and has assisted him in opening his new flower shop; however, there has been no

contemporaneous evidence such as receipts, or contractual agreements submitted to substantiate this claim. There has been no corroborating evidence, such as rent receipts or cancelled checks, submitted to substantiate the claim that the applicant resided with [REDACTED] from July 1, 2000 to June 30, 2001. Overall, there has been no evidence submitted to establish the applicant's whereabouts from June 30, 2001, to March 27, 2002, when the TPS application was filed.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

An alien applying for TPS 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. The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.