

10/11/05  
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
November 11, 2005

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



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE: [Redacted]  
[EAC 02 272 53953]

Office: VERMONT SERVICE CENTER

Date: NOV 08 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:

[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 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, counsel asserts that the applicant submits on appeal additional evidence containing his name, specific dates, and specific locations within the United States to substantiate the applicant's presence in the United States as of the requisite dates.

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).

On March 4, 2004, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The applicant has provided the following documentation:

1. A copy of the applicant's immunization record dated June 12, 2003 and containing various immunization dates;
2. A copy of a Virginia Department of Health Immunization Record dated July 10, 2003 and bearing the applicant's name, date of birth, and various immunization dates;
3. Copies of the applicant's school records from Chesterfield County Public Schools for the school year 2001, 2002, and 2003;
4. A copy of a School Certificate of Enrollment from the Commonwealth of Virginia that is signed and dated March 3, 2002 by the school official at Meadowbrook High School in Chesterfield, and signed by the applicant and dated March 18, 2002;

5. Photocopies of the applicant's Virginia DL Learner's Permit issued February 8, 2003, Meadowbrook High School identification card issued February of 2003, and EAD cards issued in 2002 and 2003; and,
6. A copy of the applicant's Honor Roll Award received from Meadowbrook High School in June of 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 12, 2004.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and resubmits the applicant's school records, immunization records, and certificate of school enrollment. Counsel also submits the following documentation:

7. A copy of an American Red Cross certification of completion for adult CPR training dated December of 2003 and bearing the applicant's name; and,
8. An affidavit from [REDACTED] of Saint Augustine Parish located in Richmond Virginia in which he states that the applicant and his family registered as members of his parish family on June 3, 2003.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant's immunization records contain various dates of immunization, but fail to specify the locations where the immunizations were administered. In addition, none of the dates indicated in the immunization records are within the requisite time period of February 13, 2001 through August 24, 2002. Although the applicant submitted school records for the school years 2001, 2002, and 2003 (No. 3 above) it appears from the applicant's school enrollment certificate issued by the Commonwealth of Virginia (No. 4 above) that he did not begin school until March 2002 which is within the 2001 school year.

The applicant's photo identification, Honor Roll Award, and Red Cross certification are all dated after the requisite time period. The affidavit from the pastor of Saint Augustine Parish indicates that the applicant registered with his church as a member on June 3, 2003 which is subsequent to requisite time period. 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.

**ORDER:** The appeal is dismissed.