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



U.S. Citizenship  
and Immigration  
Services

M1

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date: NOV 29 2005

[SRC 01 246 56399]

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 by the Director, Texas 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 residence on or before February 13, 2001 and his continuous physical presence from March 9, 2001 to July 23, 2001. The director also determined the applicant had provided no evidence of his residence or presence prior to October 2001.

On appeal, the applicant explains that his son has a pending application for asylum. He submits an affidavit from his son and rental receipts issued by his son to him and asserts that he has been living with his son since he came to this country.

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).

As noted by the director, in response to the director's Request for Additional Information dated May 21, 2004, the applicant submitted the following documentation concerning his continuous residence and continuous physical presence:

1. A moneygram receipt dated August 2, 2002.
2. Copies of his Federal Income Tax submissions for 2001, 2002 and 2003.
3. An unsigned letter dated May 27, 2004 from [REDACTED] of the Human Resource department of Tyson Foods, Inc., Van Buren, Arkansas indicating the applicant began employment with the corporation on October 28, 2003.
4. A copy of an e-mail message dated May 28, 2004 from [REDACTED] to [REDACTED] requesting verification of the applicant's employment from October 15, 2001 through April 18, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 15, 2004. On appeal, the applicant submits the following documents:

5. An affidavit dated June 20, 2004 from [REDACTED] from Fort Smith, Arkansas in which he states: "I verify that my father: [REDACTED] has lived with me since he came to the United States in August 2000 until this date. I have been responsible for room and board and all his medical expenses. He needs to start working. Please issue him a work card so he can help me with his financial affairs."
6. Rental receipts dated 2/28/01, 3/3/01, 4/1/01, 5/1/01 and 6/1/01 purportedly documenting that the applicant paid [REDACTED] \$300 per month rent per month during the period from February through July 2001.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated December 17, 1998 indicating that the United States Border Patrol apprehended the applicant after he illegally entered the United States by wading across the Rio Grande River. At that time he stated that he left El Salvador on November 30, 1998 to travel to the United States and that he was en route to Arkansas. On November 2, 1999, the applicant was ordered removed from the United States by an immigration judge in Memphis, Tennessee after he failed to appear for his deportation hearing.

The applicant claims to have reentered the United States on August 6, 2000. It is reasonable to assume that he would have a variety of contemporaneous evidence to support this claim. The affidavit and rent receipts submitted by the applicant's son (Numbers 4 and 5 above) are not persuasive evidence of continuous residence or physical presence. Furthermore, the receipts are numbered consecutively but they were not issued in order as the fourth (dated May 1, 2001, receipt # [REDACTED]) is dated one month prior to the fifth (dated June 1, 2001, receipt # [REDACTED]). This discrepancy along with the fact that the rent receipts are surfacing only on appeal which is late in the adjudicative process and given that it is unusual for a son to provide a father with rent receipts calls into question the validity of these documents. 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. 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).

The fact that the applicant's son has a pending application for political asylum does not enhance the applicant's eligibility for the benefit sought. Other than the affidavit from his family member and the rent receipts, the applicant has not submitted evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from just prior to February 13, 2001, to July 23, 2001, the filing date of the application. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c) (*supra*). 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.