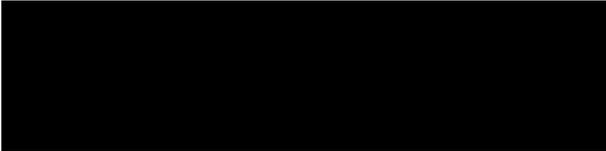


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FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 30 2005**

[EAC 02 008 51076]

IN RE:

Applicant:



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, 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 on July 12, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement.

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 temporary protected status 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.

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 has been granted, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 through September 9, 2002. The record reveals that the applicant filed his Form I-821, Application for Temporary Protected Status, with the

Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 10, 2001.

The burden of proof is upon the applicant to establish that he 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 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 indicated on his Form I-821 that he entered the United States without inspection near Phoenix, Arizona, on November 15, 2000. In support of his application, the applicant submitted the following:

1. an affidavit dated September 6, 2001, from Carlos Rivera stating that the applicant has lived in his home located at [REDACTED] since November 2000; and,
2. an affidavit dated September 6, 2001, from [REDACTED] stating that he has known the applicant since January 2001.

On January 2, 2004, 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. The applicant, in response to the notice, filed a motion to reopen under CIS receipt number EAC 04 093 53951. The applicant stated that he didn't have much contemporaneous evidence to provide to establish his qualifying continuous residence and continuous physical presence because he lived with friends and relatives after he arrived in this county, and he worked for cash. He provided the following:

3. photocopies of five earnings statements from Excell Management Corporation, location unknown, for the following pay periods: June 16, 2001 to June 30, 2001; July 1, 2001 to July 15, 2001; August 16, 2001 to August 31, 2001; September 1, 2001 to September 15, 2001; and October 1, 2001 to October 15, 2001.

On May 7, 2004, the director issued a second Notice of Intent to Deny requesting additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States. The director noted that the applicant's Social Security number as it appeared on the Excell earnings statement, [REDACTED] did not match the Social Security number he listed on his Form I-765, Application for Employment Authorization [REDACTED].

In response, the applicant stated in a letter dated May 27, 2004:

In reference to the discrepancy of my Social Security number, I would like to clarify that after obtaining my TPS Permit I was able to obtain a Social Security number which [REDACTED]. Obtaining this permit has allow[ed] me to maintain a job and be able to pay my taxes.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application and the motion to reopen on July 12, 2004.

On appeal, the applicant states that he was a minor when he first came to the United States, and that he lived with his uncle, [REDACTED]. He does not submit any additional evidence.

The applicant's explanation for the discrepancy in his Social Security number as it appears on the earnings statements (No. 3 above) and on his Form I-785 is not acceptable. There are additional discrepancies in the earnings statements. The Excell Corporation earnings statements indicate that the applicant is married and claiming five exemptions for federal income tax purposes. The applicant indicated on his Form I-821 that he is single, and that he does not have a wife or any children. The applicant has not provided any explanation for these additional discrepancies.

Doubt cast on any aspect of the applicant's proof 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, and 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). In view of the foregoing, the earnings statements cannot be accepted as credible evidence of the applicant's residence and physical presence in the United States.

The affidavits from [REDACTED] and [REDACTED] are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant claims to have lived in the United States since November 2000. It is reasonable to expect that he would have some type of contemporaneous documents to corroborate these affidavits; however, no credible contemporaneous evidence has been provided. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and 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.

The application 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.