



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
[EAC 03 028 51843]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 10 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:

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, 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 originally denied the application on January 28, 2004, because the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. The applicant appealed the director's decision on March 9, 2004. Because the appeal was not filed within the prescribed period of 33 days, the director rejected the appeal and accepted it as a Motion to Reopen. After a complete review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome and again denied the application on April 13, 2004.

On appeal, the applicant submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General 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 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, 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 record shows that the applicant filed his TPS application on September 11, 2002. In support of his application, the applicant submitted:

1. Copies of two rent receipts dated November 1, 2000, and February 1, 2001, made out to David Garcia.

In a notice of intent to deny dated October 7, 2003, the applicant was requested to submit additional evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant submitted:

2. Copies of annual lease agreements signed by the applicant and his landlord, Raul A. Pineda, for the rent of an apartment in the amount of \$300 a month, beginning from July 1, 2000 to June 31 [sic], 2004, inclusive.
3. A letter of employment from Brian Ford indicating that the applicant was employed at his restaurant, "Pizzeria Santa Lucia," since January 2001.
4. A copy of an envelope addressed to the applicant, and postmarked September 6, 2002.

The director noted that although the lease agreements (No. 2 above) indicate that the applicant agreed to pay \$300 dollars per month, the rent receipts (No. 1 above) indicate that he paid the amount of \$125 to a David Garcia for the same time period for rent at the same address. The director determined that the applicant had not overcome the grounds of denial and denied the application on January 28, 2004.

On motion, received on March 9, 2004, the applicant asserts that the rent receipts (No. 1 above) were inadvertently sent with his application. He resubmitted copies of his lease agreements (No. 2 above). He also submitted the following:

5. A statement dated February 19, 2004, from [redacted] indicating that he has known the applicant since approximately February 2002.
6. A statement dated February 21, 2004, from [redacted] [last name illegible] indicating that she has known the applicant since January 2002, and that she is a regular customer at his work place, Santa Lucie.
7. Copies of an undated credit approval notice with an expiration date of May 12, 2003; a notice from First Premier Bank regarding a MasterCard reflecting a date of May 18, 2003; an undated letter addressed to the applicant from Shopping Service of America, in the Spanish language; a rebate check from Shopping Service of America in the amount of \$400, valid until October 22, 2003; a copy of an envelope addressed to the applicant, postmarked November 17, 2003; and copies of CIS documents sent to the applicant after the date of filing the TPS application.

The director determined that the evidence submitted did not sufficiently show that the applicant had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States from March 9, 2001, to the date of filing the application. She, therefore, concluded that the grounds of denial had not been overcome and affirmed her decision to deny on June 24, 2004.

On appeal, the applicant requests that he be given a second chance. He submits yet more copies of his lease agreements and a copy of a postal receipt dated February 24, 2004, as proof that he sent an application to CIS.

The applicant, on motion, stated that he inadvertently sent with his application the rent receipts paid to David Garcia (No. 1 above). Although the applicant further stated that his lease agreement with Paul A. Pineda dated back to July 2000 for a monthly payment of \$300, he failed to explain the discrepancies noted by the director in his January 28, 2004 decision. The applicant could have submitted copies of rent receipts issued by his landlord. 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. It is incumbent upon 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancy in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant, including the lease agreement, is suspect.

The employment letter from Brian Ford (No. 3 above) 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, the letter is not in affidavit form, it is not attested to by the employer under penalty of perjury, it does not provide the address of the employer and the address or addresses 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 duties with the company. Moreover, the letter was not supported by any other corroborative evidence, such as pay statements.

