

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



M

FILE:



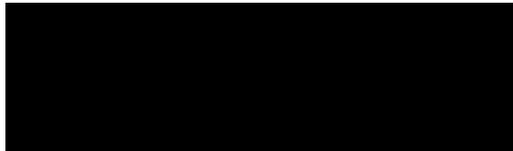
OFFICE: VERMONT SERVICE CENTER

DATE: SEP 23 2005

[EAC 02 251 51707]

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 because the applicant had failed to establish that: (1) he had continuously resided in the United States since February 13, 2001; (2) he had been continuously physically present from March 9, 2001, to the date of filing the application; and (3) Jose Caceres and Manuel Rivas are the same person.

On appeal, the applicant states that he wants to work legally in this country. He submits additional evidence.

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 July 26, 2002. In support of his application, the applicant submitted:

1. A copy of his El Salvadoran birth certificate with English translation.
2. Copies of pay statements dated from July 17, 1999 through October 21, 2000, inclusive, all under the name of [REDACTED]
3. Copies of Form W-2 Wage and Tax Statements for the years 2000 and 2001, under the name of [REDACTED]

In a notice of intent to deny dated July 26, 2003, and again on October 1, 2003, the applicant was requested to: (1) submit documentary evidence showing that [REDACTED] and [REDACTED] are the same person; (2) provide a written explanation, including any relevant documentary evidence to overcome the discrepancies between the Spanish-language birth certificate indicating his date of birth as February 7, 1962, and his application for TPS, Form I-821, indicating his date of birth as February 7, 1952; (3) submit evidence to show that he had continuously resided in the United States since February 13, 2001; and (4) provide documents to show that he had been continuously physically present from March 9, 2001, to the date of filing the application. In response, the applicant submitted:

4. Another copy of his El Salvadoran birth certificate, and a copy of the biographical page of an El Salvadoran passport issued to the applicant in Washington, DC, on October 29, 2003.

The director determined that the evidence furnished did not overcome the grounds of denial and denied the application on April 20, 2004.

On appeal, the applicant submits another copy of his birth certificate and English translation, and copies of his El Salvadoran passport. However, the applicant neither addressed nor submitted any evidence to establish continuous residence and continuous physical presence during the requisite period, and that [REDACTED] and [REDACTED] are the same person. Therefore, documents furnished under the name of [REDACTED] (Nos. 2 and 3 above) cannot be accepted as documents belonging to the applicant.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The documents listed as Nos. 2 and 3 above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

The Federal Bureau of Investigation fingerprint results report shows that the applicant was apprehended at McAllen, Texas, on October 7, 1998, under the name of [REDACTED] and that he was subsequently placed in removal proceedings.

This 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.