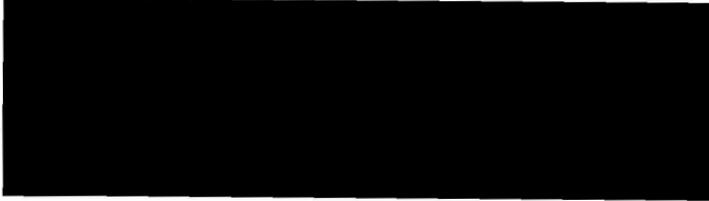


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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 19 2006  
[SRC 01 238 55074]

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:



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*  
Robert P. Wiemann, Chief  
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 determined that the applicant failed to establish 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. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant is eligible for the benefit sought.

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 as 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 section 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 physically present*, as used 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 term *continuously resided*, as used 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 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite 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 9, 2001. On January 14, 2004, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided a statement from Rev. [REDACTED], Associate Pastor Blessed Sacrament Church, Burlington, North Carolina, and a Social Security Administration Retirement, Survivors, and Disability Insurance Request for Employee Information dated May 4, 2002, for the 2001 tax year.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the applicant is submitting three affidavits which establish a prima facie case for TPS eligibility. The applicant submits a personal affidavit in which he states that he entered the United States on December 15, 2000, stayed in California for approximately one week and then traveled to North Carolina. According to the applicant, he stayed with J [REDACTED] from the latter part of December 2000 until the end of March 2001. The applicant states that he did not work during this period and later moved to Greensboro and stayed with friends while he waited for a job to materialize. The applicant states that at this point he obtained a copy of a North Carolina Identification Card on May 14, 2001. The applicant asserts that he has no other documents that he can find to show when he arrived in the United States. The applicant also submits a statement from [REDACTED] who states that he met the applicant in December 2000 and agreed to let the applicant stay with him for a short while. According to Mr. [REDACTED], the applicant stayed with him until

March 2001, and that he provided room and board for the applicant during that period. The applicant also resubmits the letter from Rev. [REDACTED] in which he states that he has known the applicant since December 2000 and the applicant has attended services at his church with some regularity.

The applicant admits in his affidavit that he has no documentation to support his claim. Similarly, Mr. [REDACTED] statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. According to Rev. [REDACTED], he has been associate pastor at Blessed Sacrament Church since December 2000 and has seen the applicant attend religious services on a regular basis. However, the statement from Rev. [REDACTED] also 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)(v). Specifically, the pastor does not provide the inclusive dates of the applicant's membership at the church. Therefore, these statements are of little or no probative value. The earliest evidence of the applicant's presence in the United States is the driver's license issued on May 14, 2001 in North Carolina.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.

Counsel also provides a copy of a memorandum dated February 7, 2002, Administrative Closure When Alien is Prima Facie Eligible for TPS or DED, and states that the applicant's case parallels the directive of the memorandum. The memorandum, however, directs the Service (now CIS) as to the administrative closing of removal proceedings when an applicant appears to be prima facie eligible for TPS. The facts of the applicant's case are not within the parameters of the memorandum, as he is not known to currently be in proceedings, nor does the appearance of initial prima facie eligibility bear implication for any future determination of eligibility or grant of TPS.

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.