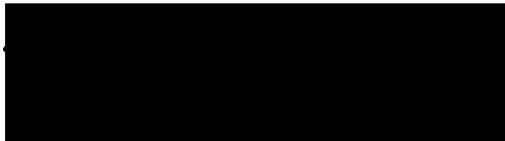




U.S. Citizenship
and Immigration
Services

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



M1

FILE: [REDACTED]
[EAC 02 138 53019]

Office: VERMONT SERVICE CENTER

Date: JUN 05 2006

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and she again denied the application. The applicant appealed the director's decision on the motion, and it 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 initially denied the application as abandoned because the applicant failed to appear for fingerprinting.

The applicant subsequently filed a motion to appeal.

The director subsequently 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, the applicant states that he hopes his case is reopened. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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, 2006, 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 March 14, 2002. On June 27, 2003, the director denied the application as abandoned because the applicant failed to appear for fingerprinting. On May 21, 2004, and again on August 25, 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 was also requested to submit a photo identity document. The applicant, in response, provided:

1. Statements from his brother [REDACTED] his father [REDACTED] and [REDACTED]
2. Copies of pay stubs from [REDACTED], Bethesda, Maryland dated May 2, 2003, May 16, 2003, April 18, 2003, and December 24, 2003, from [REDACTED]

[REDACTED] dated January 3, 2004, from [REDACTED] Partnership dated August 18, 2003, and September 15, 2003.

3. Copies of a Chevy Chase Bank Statement of Account dated May 7, 2003, a Bank of America Statement of Account dated April 12, 2004.
4. Copies of Montgomery County Public Schools Report to Parents on Student Progress dated April 16, 2002, and June 25, 2003.
5. Copies of a 2001–2002 Gaithersburg High School identification card, a State of Virginia Identification Card issued July 10, 2001 and a State of Virginia Drivers License Learner's Permit issued on September 17, 2001, an envelope from [REDACTED] [REDACTED] date-stamped April 30, 2004.
6. Copies of Bank of America checks from dated April 2, 2004 and April 4, 2004 and a Chevy Chase Bank dated January 15, 2001.

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, the applicant states that he wishes to reopen his case. According to the applicant, he does not have much evidence from January to September 2001 because he was 16-years-old when he came to the United States. The applicant also submits the following documentation:

7. A letter from [REDACTED] Registrar for Colonel Zadok Magruder High School dated January 4, 2005 and an envelope from Colonel Zadok Magruder High School date-stamped November 28, 2003.
8. An undated copy of a Magruder High School identification card identifying the applicant as a member of the class of 2006 and a Course Verification Slips dated May 22, 2003.
9. Copies of pay stubs from [REDACTED] dated February 2, 2004, February 16, 2004, March 29, 2004, and April 26, 2004.
10. Copies of pay stubs from [REDACTED] Inc., Bethesda, Maryland dated January 9, 2004 (two copies with different amounts), January 24, 2003, February 7, 2003, February 21, 2003, March 7, 2003, April 4, 2003, April 18, 2003, May 30, 2003, June 13, 2003, June 27, 2003, July 25, 2003, September 5, 2003, September 19, 2003, October 31, 2003, December 24, 2003, and January 9, 2004, and a copy of a pay stub from [REDACTED] dated January 31, 2004, and copies of pay stubs from [REDACTED] dated May 3, 2003 and May 16, 2003.
11. A copy of a Selective Service System registration form dated August 29, 2003.

12. A copy of a Bank of America Statement of Account dated January 9, 2004, a letter from Banc of America Insurance Systems with accompanying forms with a due date of February 10, 2004.
13. A copy of a letter from the Maryland Automobile Insurance Fund dated August 9, 2004.
14. A copy of the applicant's father's employment authorization card issued on June 19, 2004.

The applicant also resubmits evidence previously provided.

Mr. [REDACTED] the applicant's brother, stated that the applicant lived with him from January 2001 to January 31, 2002. According to Mr. [REDACTED] the applicant was studying at Gaithersburg high School and he provided him with financial support. Mr. [REDACTED] the applicant's father, stated that the applicant has lived with him since September 2, 2003 and that he is TPS-eligible. Ms. [REDACTED] stated that the applicant lived with her from February 2002 to September 1, 2003. Mr. [REDACTED] and [REDACTED] stated that they have known the applicant since January 2001. However, these statements are 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.

The Chevy Chase Bank check is dated January 15, 2001, however, it cannot be determined if the applicant or his father wrote the check. Furthermore, there is nothing to indicate the check had actually been tendered and processed. At most, the check indicates that the applicant was present in the United States on that date. It cannot establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of his TPS application. Of the remaining evidence, the Virginia identification card indicates a date of July 10, 2001, and is the earliest date presented as evidence of the applicant's presence in the United States. The remaining evidence is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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.

Beyond the director's decision, it is noted that CIS records show that the applicant entered the United States on May 1, 2001, in Atlanta, Georgia as a visitor and was admitted until October 30, 2001. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant was in the United States during the operable timeframe. Therefore, the application must be denied on this basis as well.

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.