

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

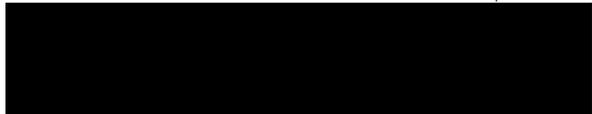
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M1

**PUBLIC COPY**

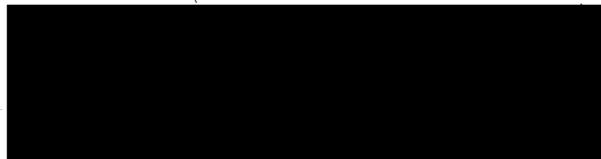


FILE: [REDACTED]  
[EAC 02 201 51506]

Office: VERMONT SERVICE CENTER

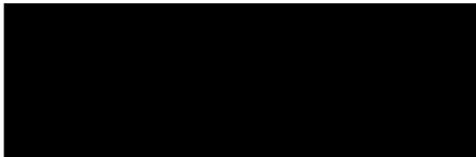
Date: APR 27 2007

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:



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, Chief  
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 failed to establish that he had continuously resided in the United States since February 13, 2001; and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility for TPS.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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 parole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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.

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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until September 9, 2007, 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).

On July 1, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. A copy of a money gram dated September 8, 2000, and bearing the applicant's name;
2. A photocopy of the applicant's Maryland Identification Card issued on January 27, 2003;
3. Copies of the applicant's pay stubs from Baja Fresh Westlake Village, Inc. and dated August of 2002 through to July of 2003;
4. Copies of the applicant's bank statements from Bank of America and Chevy Chase Bank dated March 18, 2003 and May 23, 2003;
5. Copies of the applicant's utility bills from Sprint and Pepco dated February, March, and June of 2003;
6. A copy of a letter from La Moda Tax Service dated April 7, 2003, and bearing the applicant's name as tax payer for the tax year 2002; and,
7. Copies of the applicant's income tax Forms 1040, W-2, and an earnings statement for the 2002 tax year.

The director denied the TPS application on October 2, 2003, because the applicant had failed to submit evidence to establish his presence in the United States from September of 2000 through August of 2002.

On appeal, counsel reasserts the applicant's claim of eligibility for TPS and submits the following documentation:

8. A copy of [REDACTED] Employment Authorization cards;
9. A Certificate of Live Birth from the State of Maryland indicating that the applicant is the father and [REDACTED] is the mother of a male child born on February 25, 2002;
10. A copy of a birth registration notice from the Maryland Department of Health and Mental Hygiene issued on March 5, 2002, indicating that the applicant is the father of a male child born on February 25, 2002;
11. A copy of an insurance company claim from Holy Cross Hospital for imaging services bearing the name [REDACTED] and dated January 17, 2002;
12. A copy of a pregnancy report from the Germantown Health Center, Department of Health and Human Service indicating that [REDACTED] had a positive urine pregnancy test on August 24, 2001, that her LMP was June 22, 2001, and her EDC is March 29, 2002;
13. An affidavit from [REDACTED] in which he stated that the applicant has been living with him in his different apartments from November 14, 2000 to November 31, 2002, and paid him \$250.00 and \$400.00, respectively for rent;
14. Copies of rent receipts bearing the name [REDACTED] as tenant and dated November of 2000 and March through July of 2001; and,
15. A copy of a residential lease agreement dated November 1, 2001 through October 31, 2002, and bearing the name [REDACTED] as tenant.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001 through May 22, 2002. The money gram submitted by the applicant in number 1 above is dated prior to the relevant time period in question and the evidence contained in numbers 2 through 5 above are dated subsequent to the requisite time period; and therefore, cannot be used to establish the applicant's eligibility for TPS. The tax documents submitted (see numbers 6 and 7 above) as evidence are for the 2002 tax year in general, and do not indicate the exact dates in which the applicant was employed in the United States.

The medical documents submitted by the applicant pertaining to his son's birth (see numbers 8 through 12 above) indicate that the child was conceived on or about June 22, 2001, and that the child was born on February 25, 2002. Although this indicates that the applicant was probably present in the United States in June of 2001, it is not sufficient to show that he was actually present in the country before or after that time.

[REDACTED] stated that the applicant resided with him from November 14, 2000 to November 31, 2002, and that the applicant paid him \$250.00 and \$400.00 per month for rent (see number 13 above). However, the evidence submitted does not support the assertion made by [REDACTED] (see numbers 14 through 15 above) because none of the documents contain the applicant's name as tenant.

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

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.