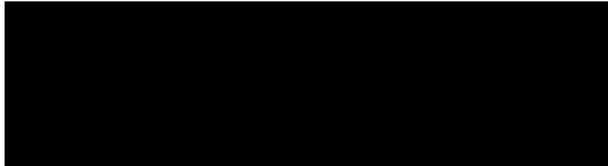


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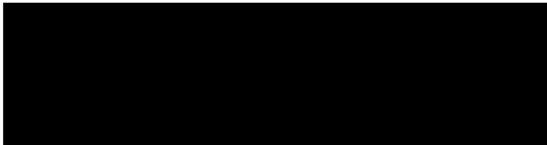
MI

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **MAR 30 2007**  
[EAC 01 202 56171]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 reparole; 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).

The applicant submitted the following documentation along with his TPS application:

1. A copy of the applicant's El Salvadoran birth certificate along with an English translation of the document;
2. A copy of the applicant's El Salvadoran Cedula dated November 22, 1996;
3. A copy of the applicant's El Salvadoran passport issued to him on August 12, 1997;
4. A copy of an affidavit from [REDACTED] dated March 20, 2001, in which he stated that he has known the applicant for two years as an acquaintance, and that the applicant has been in the United States during that period;
5. A copy of an affidavit from [REDACTED] dated March 8, 2001, in which he stated that he has known the applicant for two years; and,
6. A copy of a letter from the pastor of [REDACTED] in which he stated that the applicant has participated in his parish since 1997.

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 failed to respond to the director's request for evidence.

The director determined that the applicant had failed to submit evidence to establish his eligibility for TPS and denied the application on August 20, 2003.

The applicant filed a motion to reopen on September 3, 2003. The AAO remanded the case to the Vermont Service Center for a new decision that sets forth the specific reasons for the denial. The applicant submitted the following documentation along with his motion:

7. An affidavit from [REDACTED] in which he stated that he has known the applicant to have resided in Massachusetts since February of 2001;
8. An affidavit from [REDACTED] in which he stated that the applicant rented an apartment from him from February of 2001 to December of 2002; and,
9. Copies of rent receipts written to the applicant and dated February, March, April, and June of 2001, and May of 2003.

The director again denied the TPS application on December 5, 2005, because the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant appealed the director's decision and submitted the following documentation:

10. A copy of a hand written lease agreement between the applicant as tenant and [REDACTED] [REDACTED]'s landlord, for the premises known as [REDACTED] Massachusetts, for the term December 1, 1999 through December 1, 2000;
11. An employee record that indicates the applicant's hire date of September 21, 2000;
12. A letter of employment from the general manager of Au Bon Pain in Massachusetts in which he stated that the applicant was hired by the company in 2000, worked for two years, left the company for three years, and returned to work in January of 2005;
13. A copy of a hand written month to month lease agreement for the premises known as [REDACTED] [REDACTED] Massachusetts dated December 1, 2000, and bearing the applicant's signature as tenant and [REDACTED] as landlord;
14. A copy of the applicant's son's birth certificate from the Commonwealth of Massachusetts dated September 3, 2001; and,
15. A copy of a Massachusetts marriage certificate indicating that the applicant was married in the Commonwealth on June 1, 2002.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant submitted conflicting documentation relating to his rental of the premises known as [REDACTED] [REDACTED] (see numbers 8, 9, 10, and 13 above). The landlord initially stated that he rented to the applicant from February of 2001 to December of 2002. The applicant submitted copies of rent receipts that were dated in

2001 and 2003, with inconsistent sequence numbers. There were no receipts submitted for 2002. In further contrast, the applicant submitted a lease agreement for the premises known as [REDACTED] dated December 1, 1999 through December 1, 2000. There has been no corroborating evidence submitted to support that contention. 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 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 inconsistencies. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The general manager of Au Bon Pain has failed to provide the applicant's exact dates of employment. There has been no corroborative evidence submitted to substantiate the affiant's assertions (see numbers 4, 5, 7, and 8 above). The applicant claims to have been present in the United States since September of 1997. It is reasonable to expect that he 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 letter from the pastor of [REDACTED] 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 explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

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.