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



U.S. Citizenship
and Immigration
Services

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FILE:



[EAC 02 177 51250]
[EAC 07 241 51192, motion]

OFFICE: Vermont Service Center

DATE:

MAR 19 2008

INRE:

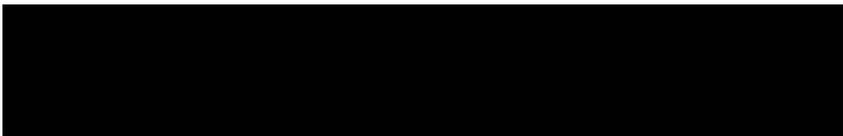
Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiem".

Robert P. Wiem Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the Administrative Appeals Office on a motion to reopen. The motion to reopen will be dismissed.

The applicant is stated to be a 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 record reveals that the applicant filed a TPS application on April 26, 2002, under CIS receipt number EAC 02 177 51250. The director denied the application on March 29, 2004, after determining that the applicant had 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, to the date of filing the application. A subsequent appeal was dismissed by the Director, now Chief, of the AAO on July 29, 2005.

On motion to reopen, counsel for the applicant asserts that the applicant is eligible for TPS and submits additional evidence.

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. The designation of TPS for El Salvadorans has been extended several times, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

On motion to reopen, counsel for the ap _____ to approve the case and submits the applicant's birth certificate and an employer letter from _____, President/CEO of _____, attesting that the applicant has been an employee since 1997.

On the Form 1-1290B, Notice of Appeal to the Administrative Appeals Office (AAO), counsel states that the applicant has been employed at this company since 1999; however, it is noted that on his 1-821, Application for Temporary Protected Status, the applicant indicated that he entered the United States in September of 2000.

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, in fact, 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 detailed above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish eligibility for TPS.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the requisite periods. He has, thereby, failed to establish that he has

met the 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**.

In addition, it is noted that the applicant has failed to address the inconsistencies in the evidence he previously submitted which were discussed in the AAO's July 29, 2005 decision.

A motion that does not meet applicable requirements shall be dismissed. 8 C.P.R. § 103.5(a)(4).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. **That** burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated July 29, 2005, is affirmed.