



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
[EAC 02 211 50949]

Office: VERMONT SERVICE CENTER

Date: JAN - 2 2009

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. A subsequent appeal was remanded by the Chief, Administrative Appeals Office (AAO). The Director, Vermont Service Center subsequently denied the application again 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 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 asserts that the director erred in denying the application because the applicant qualifies for TPS. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial TPS application on June 3, 2002.

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 United States Citizenship and Immigration Services (USCIS). 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 June 3, 2002. On February 4, 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 failed to respond to the notice.

The director determined that the applicant failed to respond to the notice and denied the application.

On April 22, 2005, the applicant filed a re-registration application. On August 16, 2005, the Director, California Service Center denied this application because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On appeal, the applicant requested that his application be reconsidered. The applicant also submitted additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. Specifically, the applicant submitted:

1. Copies of his Social Security Card and his employment authorization cards issued on July 19, 2002, September 10, 2002 and January 27, 2004.
2. Copies of pay stubs dated October 26, 1996, November 16, 1996, November 23, 1996, November 23, 1996, and December 23, 1996.
3. A copy of a County First Bank Savings Deposit receipt dated May 6, 1997.

The Chief, AAO reopened the initial application, *sua sponte*, and the case was remanded because the director failed to specify in her decision the reasons for the initial denial.

On May 22, 2008, the Director, Vermont Service Center denied the application again because the applicant failed to establish continuous residence and continuous physical presence in the United States during the qualifying period.

On appeal, counsel states that the director erred in denying the application because the applicant had established prima facie eligibility for TPS. The applicant also submits copies of a personal affidavit, and statements from ██████████ President, Easterns Automotive Group, ██████████ and a statement from National Hospital of Ilobasco which bears an illegible signature.

The pay stubs and deposit receipt are all dated prior to the qualifying dates to establish continuous residence and continuous physical presence. It is also noted that the pay stubs indicate either no Social Security Number or a different Social Security number than the number provided by the applicant on his TPS application. These discrepancies have not been satisfactorily explained. 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 employment authorization cards are all dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence. Therefore these documents are of little or no probative value. In his statement, the applicant reasserts his eligibility for TPS. ██████████ states that his company employed the applicant since February 2001. However, this statement 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)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment.

states that the applicant rented a room from him from August 1998 until March 2002. This statement also lacks evidentiary weight or probative value. The 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. The letter from the National Hospital of Ilobasco indicates that an individual whose name is not clearly shown suffers from Chronic Obstructive Pulmonary Disease. The statement is signed by a doctor whose name is also illegible. Thus, this document is also of little or no probative value.

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.

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.