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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

MI

[REDACTED]

FILE:

[REDACTED]  
[EAC 08 199 70013]

Office: VERMONT SERVICE CENTER

Date: SEP 02 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

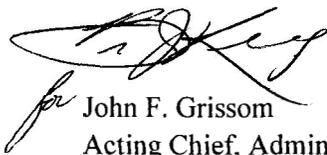
ON BEHALF OF APPLICANT:

[REDACTED]

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, 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 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 states that the director's denial disregards the evidence provided by the applicant.

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 10, 2010, 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 April 14, 2008.

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 April 14, 2008. In support of this application, the applicant submitted copies of his Salvadoran Identification Card; his birth certificate with English translation; his California Identification Card, issued on June 18, 1991; his Social Security Administration Statement showing reported income from 1992 to 2005; his marriage certificate showing he was married on November 16, 2007; Internal Revenue Service Account Transcripts for 1992, 1993, 1995, 1996, 1997, 1998, 2000, and unsigned 2004-2006 Form 1040, U.S. Individual Income Tax Returns with 2004-2006 Form W-2, Wage and Tax Statements. On September 8, 2008, 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, in response, provided:

1. Copies of Employment Authorization cards issued from December 2001 until September 2008.
2. Copies of statements from the applicant, [REDACTED] and [REDACTED]
3. Copies of utility bills dated November 26, 2001, May 20, 2002, October 29, 2003, April 16, 2004, July 6, 2005, April 6, 2006, June 17, 2008, and August 20, 2008.
4. Copies of Personal Property Assessments dated April 10, 2006, September 3, 2008 and October 7, 2008.
5. Copies of an unsigned 2004 Form 1040A, U.S. Individual Income Tax Return.
6. Copies of a money order receipt dated August 10, 2004 and two handwritten receipts dated August 10, 2004 and September 27, 2004.
7. Copies of Arkansas Automobile Insurance Identification Cards with effective dates of October 19, 2005, October 19, 2006, April 19, 2007, and October 19, 2007.
8. A copy of an Arkansas Traffic Violation Report dated October 7, 2008.

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, counsel states the denial of the TPS application completely disregards the evidence of physical presence provided by the applicant. The applicant also resubmits evidence previously provided as well as evidence that is already part of the record in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The birth certificate and El Salvadoran Identification Card establishes the applicant's nationality and identity. In his statement, the applicant says that he has resided continuously in the United States since August 20, 1990. According to the applicant, he moved to the apartment where he lived at the time in January 2001 and all of the bills were in his brother-in-law's name, and were subsequently transferred into his brother's name when his brother-in-law and sister moved out. The applicant also claims that he has traveled to El Salvador three times. He states that he had advance parole the first two times, but the third time he did not have advance parole but had to go and see his sick son. He states that he was gone for six weeks. USCIS records indicate that the applicant was apprehended after entering the United States without inspection on July 18, 2004. However, the applicant has

offered no evidence of when he left the United States or any evidence of his son's illness. Therefore, it does not appear that the applicant maintained continuous residence and continuous physical presence in the United States during the qualifying periods. [REDACTED], the applicant's brother-in-law, states that he has known the applicant since January 2001 when the applicant began to live with him, until January 2007, and, that all of the apartment bills were in his name. [REDACTED], the applicant's brother, states that he moved in with his brother in 2006 or 2007 and had all of the bills transferred to his name. However, these statements have little evidentiary weight or probative value. 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.

The California Identification card and the Social Security Administration Statement indicate that the applicant was in the United States prior to the dates to establish continuous residence and continuous physical presence. However, these documents can not establish the applicant's continuous residence 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 submitted copies of utility bills. In addition to lacking probative evidence because they are in [REDACTED] and [REDACTED] names and not the applicant's name, the bills are all dated subsequent to the dates to establish continuous residence and continuous physical presence in United States. In fact, all of the evidence provided by the applicant in response to the notice of intent to deny is dated subsequent to the dates to establish continuous residence and continuous physical presence. Therefore, this evidence is of little or no probative value. It is also noted that the Social Security Administration Statement indicates that the applicant had no earned income in 2002 and 2003. In addition, the applicant has not submitted any tax information for those years as well. 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.

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.