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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

**PUBLIC COPY**

[Redacted]

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FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: MAR 30 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the Vermont Service Center by filing a Form I-290B, notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC). The applicant filed an appeal, which was dismissed by the Chief, Administrative Appeals Office (AAO). Two motions to reopen and/or reconsider were dismissed by the AAO, and the application is now before the AAO on a third motion to reopen. The motion will be dismissed.

The applicant is a citizen of El Salvador who is applying for 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 on the grounds that the applicant failed to establish his continuous residence and physical presence in the United States during the requisite periods to qualify for TPS. The director's decision was upheld in subsequent actions before the AAO.

In the current motion before the AAO, counsel contends that the applicant has submitted sufficient evidence to establish that he meets the continuous residence and continuous physical presence requirements for TPS.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

The requirements for a motion to reopen are set forth at 8 C.F.R. § 103.5(a)(2):

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

As further provided in 8 C.F.R. § 103.5(a)(4):

A motion that does not meet applicable requirements shall be dismissed.

To set the applicant's current motion in context, a brief recitation of the proceedings up to now is in order.

On April 3, 2008 the VSC director denied the application on the ground that the applicant had not established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director referred to the VSC's notice of October 24, 2007, advising the applicant that the record lacked evidence for the time period of February 13, 2001 to November 2001. The director determined that the documents submitted in response to that notice – which included copies of a Social Security Statement covering the years 1992 to 2005, a Gigante Express receipt dated January 7, 2001, and some other receipts and invoices dated from 2002 to 2007 – were insufficient to establish the applicant's continuous residence and physical presence in the United States for the requisite time period – in particular from February 13, 2001 to November 2001.

On appeal, counsel asserted that the director's decision was erroneous because the evidence of record clearly established the applicant's continuous residence and physical presence in the United States during the requisite periods to qualify for TPS. No new evidence was submitted, however, and the AAO dismissed the appeal on January 30, 2009.

Two motions to reopen and/or reconsider were subsequently filed, both reiterating the applicant's contention that the evidence of record was sufficient to establish his eligibility for TPS. No further evidence was submitted aside from an affidavit from the applicant, however, and both motions were dismissed.

The applicant then filed a third motion to reopen, accompanied by some additional documentation. The only documents relevant to the applicant's residence and physical presence in the United States are photocopies of two U.S. Individual Income Tax Returns (Form 1040) for the years 2001 and 2002, each bearing the applicant's signature and dated in 2004.

The burden of proof is upon the applicant to establish that he or she meets the requirements for TPS. *See* 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. *See* 8 C.F.R. § 244.9(b).

Upon review of the entire record, the AAO determines that the evidence still fails to establish the applicant's continuous residence in the United States from February 13, 2001 to November 2001, and his continuous physical presence in the United States from March 9, 2001 to November 2001.

The photocopied tax returns submitted with the current motion lack credibility. They were both filled out in longhand, but the writing style on the documents does not appear to match the applicant's signature at the end. So it appears the forms were filled out by someone else, though the "paid preparer" signature block below the applicant's signature block is blank on both forms. Both of the Form 1040s were filled out late – the 2001 form is dated 6-13-04 and the 2002 form is dated 3-27-04 – but neither form bears any proof of having actually been filed with the Internal Revenue Service.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Moreover, doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. *See id.*

The only credible evidence in the file demonstrating the applicant's residence and physical presence in the United States during the year 2001 is the applicant's Social Security Statement, dated February 6, 2007, which lists earnings for the years 1992 through 1998, then nothing in the years 1999 and 2000, followed by a small sum in 2001 and larger sums from 2002 through 2005. The small earnings recorded for the year 2001 do not appear to be consistent with the figures entered by the applicant on his after-the-fact tax return for that year, which further undermines the credibility of that document. Moreover, the small earnings recorded for 2001 do not bolster the applicant's claim to have been resident, present, and working in the United States for that entire year.

The social security figures suggest that the applicant may have been absent from the United States for considerable periods of time in the years 1999 to 2001. Indeed, the record clearly shows that the applicant departed the United States at least once during those years, since he was arrested in McAllen, Texas, by the U.S. Border Patrol on June 18, 2000, two days after entering the country

illegally from Mexico. It is also noteworthy that while the applicant submitted numerous photocopies of his employment authorization cards over the years (in particular the years 1993-94, 1994-95, 1996-97, 2002-03, 2003-04, 2004-05, and 2006-07), none of the cards cover any parts of the years 1999, 2000, and 2001.

For the reasons discussed above, the AAO concludes that the applicant has failed to establish that he was continuously physically present in the United States from March 9, 2001, and continuously resident in the United States from February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the motion to reopen will be dismissed and the previous decisions of the AAO are affirmed.

**ORDER:** The motion is dismissed. The previous decisions of the AAO are affirmed, and the application remains denied.