

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

MI

PUBLIC COPY

[REDACTED]

FILE: [REDACTED]
[EAC 02 270 52414]

Office: VERMONT SERVICE CENTER

Date: APR 27 2007

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 office that originally decided your case. Any further inquiry must be made to that office.

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).

On June 2, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and 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 July 24, 2003.

On appeal, the applicant reasserts his claim and submits the following documentation:

1. An affidavit from [REDACTED] in which he stated that he has known the applicant since April of 1998, and that the applicant has been a customer at his store;
2. An affidavit from [REDACTED] in which he stated that he has known the applicant since April of 1998, and that he is a friend of the applicant's family;
3. Copies of money order receipts from Gigante Express bearing the applicant's name as sender and dated April of 2002 and May, October, and November of 2003;

4. Copies of RIA money order receipt bearing the applicant's name as sender and dated May, June, and July of 2003; and,
5. Copies of Western Union money order receipts bearing the applicant's name as sender and dated January 18, 2003, and January 25, 2003.

The AAO remanded the case to the Vermont Service Center because the director had failed to specify the reasons for his denial.

On November 25, 2005, the director denied the TPS application because the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel states that neither she nor her client received the director's notice requesting additional evidence; and therefore, the case should be reopened for review. The applicant submitted the following documentation on appeal:

6. A copy of the applicant's IRS Form W-2, Wage and Tax Statement for the 2003 tax year;
7. A copy of the applicant's IRS Form 1040, U.S. Individual Income Tax Return for the 2003 tax year;
8. An affidavit from [REDACTED] in which she stated that she has known the applicant since April of 1998 when he came to live with her;
9. An affidavit from [REDACTED] in which he stated that he has known the applicant for seven years; and,
10. A letter from Pastor [REDACTED] of the [REDACTED] Church, Hempstead, New York, dated December 2, 2005, in which he stated that the applicant is a registered and active parishioner and has been affiliated with the church for over seven years.

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 copies of money order receipts that are dated 2002 and 2003, which is subsequent to February 13, 2001 and March 9, 2001, the initial requisite dates. The income tax documents submitted by the applicant are for the 2003 tax year, and therefore, are insufficient to establish the applicant's presence in the United States before that year.

There has been no corroborating evidence submitted to support the affiant's statements pertaining to the applicant's presence in the United States. The applicant claims to have been present in the United States since April 15, 1998. Hence, 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. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

Although the Pastor of the [REDACTED] Church located in Hempstead, New York, stated that the applicant is a registered and active member of the Parish since 1998, there has been no supporting documentation submitted to support the assertion.

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.