

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI

FILE:

[REDACTED]
[EAC 01 171 53749]

OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 01 2007**

IN RE:

Applicant: [REDACTED]

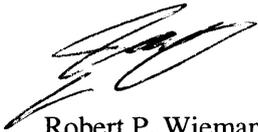
APPLICATION:

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, Director
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. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and 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 she 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.

The applicant filed an appeal to the AAO on March 1, 2003. The AAO dismissed the appeal on August 23, 2004, because the applicant failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States during the requisite time periods.

On motion to reopen, counsel states 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. 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).

The applicant has not submitted sufficient evidence to establish her qualifying continuous residence or continuous physical presence in the United States during the requisite time periods. As is noted in the director's decision dated February 19, 2003, the pay stubs submitted by the applicant as evidence were not sufficient to establish the applicant's residence and physical presence in the United States. Likewise, as is noted in the AAO decision dated August 23, 2004, the evidence submitted by the applicant including: the letter from the property manager of Cambridge Commons, the copy of a lease package, a receipt, a certificate of completion, and a utility bill were insufficient to establish the applicant's eligibility for TPS. After a review of the record, the Chief, AAO, concurs with the denial decisions.

The applicant submitted on motion, rent receipts for monies received from [REDACTED] that were dated January through December of 2001, and January through December of 2002. This evidence has no evidentiary value in that it does not contain the applicant's name or other personal identifiers. The applicant also submitted other receipts bearing his name and dated January 10, March 8, 2001, and August 5, 2001. The receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to

establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since February 16, 1997. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b).

The applicant has failed to submit sufficient evidence to establish that she has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the AAO's decision to dismiss the applicant's appeal 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.

ORDER: The appeal is dismissed.