



U.S. Citizenship  
and Immigration  
Services

MI

[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

AUG 16 2004

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.

*for*   
Robert P. Wiemann, Director  
Administrative Appeals Office

Administrative Appeals Office  
U.S. Citizenship and Immigration Services  
Washington, DC 20529

**DISCUSSION:** The application was denied by the Director, Nebraska Service Center. A motion to reopen, filed by the applicant was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion, 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 evidence furnished failed to establish the applicant's date of entry and continuous residence in the United States since February 13, 2001. The director, therefore, denied the application.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) erred in refusing to accept evidence of continuous residence since February 13, 2001.

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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 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 February 14, 2002, the applicant was provided the opportunity to submit evidence establishing his date of entry and continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001 to the date of filing the application. The applicant was also requested to submit a photo identity document. The applicant, in response, only provided evidence of his identity and nationality. Therefore, the director denied the application.

A subsequent motion to reopen the director's decision was dismissed by the director on January 9, 2003, because the person filing the motion did not qualify as the affected party pursuant to 8 C.F.R. § 103.3(a)(1)(iii)(B). A Motion to Reopen was again filed on July 3, 2003, and the applicant included additional evidence in an attempt to establish his continuous residence and physical presence in the United States. The director found the evidence furnished was sufficient to establish the applicant's physical presence since March 9, 2001, his nationality and identification. The director, however, determined that the applicant failed to establish his date of entry and continuous residence since February 13, 2001, and denied the application on May 28, 2003.

On appeal, counsel points out that rent receipts are specifically listed as evidence of continuous residence. According to counsel, CIS has refused to accept handwritten rent receipts as evidence of continuous residence since February 13, 2001. Counsel contends that in evaluating the probative value of the rent receipts, CIS failed to give weight to the continuity of evidence shown by the "substantial periods of lease time they covered."

Counsel also claims that evidence of the receipts' probative value is shown by the volume of other evidence of residence beginning in March 2001.

Counsel is correct in his statement that rent receipts are listed in 8 C.F.R. § 244.9(2)(ii) as evidence of continuous residence. However, the sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is noted that some of the receipts do not indicate the address where the applicant paid rent. In addition, none of these hand-written rent receipts are 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. Therefore, these receipts carry little evidentiary weight and will not serve to establish the applicant's eligibility.

Subsequent to the appeal, counsel furnishes additional evidence in support of the applicant's claimed continuous residence and physical presence in the United States. Counsel provides a letter from Maria C. Tovar who claims that her company employed the applicant from October 1995 until December 2000. The employment statement from [REDACTED] 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 statement is not in affidavit form, and is not signed and attested to by Ms. Tovar under penalty of perjury. In addition, the statement does not provide the address where the applicant resided during the period of his employment, or the applicant's duties with the company. Counsel also provides photocopies of pay stubs. However, there is nothing on the pay stubs to identify the employer. Moreover, there is no contemporaneous evidence provided with the pay stubs. Therefore, the pay stubs are of little or no probative value.

The applicant has failed to establish that he has met the criteria for continuous residence described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.