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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

M

[Redacted]

FILE: [Redacted] **Office:** NRBRASKA SERVICE CENTER **Date:** JUL 07 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: Self-represented

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. An appeal was subsequently dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed.

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 after determining that the applicant failed to submit evidence to establish continuous physical presence in the United States since March 9, 2001.

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on April 15, 2003.

On motion, the applicant reiterates his claim that he is eligible for TPS. The applicant submits additional evidence.

The term *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.

The term *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.

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 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 record reflects that the applicant submitted his application for TPS on June 6, 2002. The applicant stated on the Form I-821, Application for Temporary Protected Status, that he had entered the United States in November 2000.

On August 2, 2002, the applicant was requested to submit: (1) a photo identification document; (2) evidence to establish that he had entered the United States before February 13, 2001; and, (3) that he had been continuously physically present in the United States since March 9, 2001. In response, the applicant submitted a photo identification and the following evidence:

- 1.) two copies of a document in the Spanish language, dated February 25, 2001, which appear to be copies of a contract between the applicant and a [REDACTED] for rental of the premises [REDACTED] and State not shown, for the period from March 1, 2001 to March 1, 2002;
- 2.) a rental contract, executed on September 29, 2002, between the applicant and a Porfirio Landaverde, for rental of the premises a [REDACTED] for the period from December 1, 2000 to February 28, 2001;
- 3.) a November 5, 2000 receipt for purchase of furniture at U-Save Discount Furniture, San Francisco, California; and
- 4.) a February 20, 2001 receipt issued by Gigante Express, San Francisco, California.

On October 29, 2002, the applicant was again requested to submit evidence that he had been continuously physically present in the United States since March 9, 2001. In a letter dated November 24, 2002, the applicant stated that he had moved several times and he had lost most of his papers. He indicated in the letter that he was submitting a March 26, 2001 Western Union money order receipt and an application for re-registration for TPS; however, neither document is included in the applicant's file.

On January 23, 2003, the director denied the application for TPS because he concluded that the applicant had failed to submit evidence to establish that he had been continuously physically present in the United States since March 9, 2001. On appeal, the applicant requested that his paperwork be rechecked. He failed to submit any additional evidence in support of his claim of eligibility for TPS. On April 15, 2003, the AAO dismissed the applicant's appeal because the applicant had not submitted sufficient evidence to establish his eligibility for Temporary Protected Status.

On motion, the applicant submits the following evidence:

- 5.) envelopes, postmarked March 8, 2001 and May 5, 2001, addressed to the applicant at 429 Brazil Avenue, San Francisco, California;
- 6.) a March 26, 2001 Western Union money order receipt, issued in San Francisco, California; and,
- 7.) a second copy of February 20, 2001 receipt, issued by Gigante Express, San Francisco, California.

The evidence furnished on appeal suggests that the applicant may have been present in San Francisco, California, during the period from February 20, 2001 through May 2001. Yet, the rental contract, outlined in Item No. 2, above, indicates that the applicant was residing in Emporia, Kansas, through February 28, 2001. The rental contract was signed more than one year after the applicant's purported residence at that address. The Spanish language document, outlined in Item No. 1, above, was not accompanied by an English translation, and the document does not indicate the city or the state where the applicant resided. In addition, the dates of the rental term appear to have been altered to reflect a rental period of March 1, 2001 through March 1, 2002.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant claims to have resided in the United States since November 2000. It is reasonable to expect that the applicant would have some type of credible contemporaneous evidence to support these assertions; however, no such evidence has been provided. The applicant has, therefore, failed to establish that he has met the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the AAO director's decision dated April 15, 2003 will be affirmed.

The burden of proof is upon the applicant to establish that he 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 previous decision of the AAO is affirmed, and the application is denied.