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

M

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

JUN 8 2004

[LIN 02 263 50957]

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.

Robert P. Wiemann for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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 determined that the applicant failed to submit evidence to establish that he had resided in the United States since February 13, 2001 and that he had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

In addition, the record does not contain any evidence that the applicant appeared to be fingerprinted as required in 8 C.F.R. § 244.6. The director noted that the applicant had failed to appear for fingerprinting, and that there was no appeal to this portion of the decision. However, because the director denied the application for cause, the appeal will be considered.

On appeal, the applicant submits a letter from an individual, purportedly his former landlord. The applicant states that he had not submitted the evidence with his application for TPS because his landlord had not given him the affidavit.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 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.

Pursuant to 8 C.F.R. § 244.6, every applicant who is 14 years of age or older must be fingerprinted on Form FD-258, Applicant Card.

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. 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 September 16, 2002, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided photographs which were developed at a HyVee facility on November 24, 2000 and at a Walgreens' store on December 4, 2001. The photographs give no indication of when they were taken. In addition, the applicant submitted a letter written in Spanish, but it was not accompanied by an English translation with the appropriate certification as required in 8 C.F.R. § 103.2(b)(3). The director determined that the applicant had failed to submit sufficient evidence to meet the continuous residence and physical presence criteria and denied the application on February 19, 2003.

On appeal, the applicant submits a February 4, 2003 letter from [REDACTED] who states the applicant "walked in to a rental agreement" for the premises located at [REDACTED] Iowa, on January 1, 2001. Ms. [REDACTED] states the applicant and another tenant signed a one-year lease that rolls over to a month-to-month lease until another agreement is signed. She states records show that the tenants paid the rent on time, and that they maintained the property as agreed upon, and she had never had any complaints about them. However, the affidavit is unsupported by probative evidence and is insufficient to establish that the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001 to the date he filed the application on August 16, 2002.

The applicant has not submitted sufficient evidence to establish that he has met the residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this ground 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.