

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[REDACTED]

MI

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: AUG 03 2005

[WAC 01 187 50065]

[LIN 02 290 50288]

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, 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 denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant 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 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 § 244.3;
- (e) Is not ineligible under § 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.

- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. Subsequent extensions of the TPS designation has been granted, with the latest extension valid until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001 to September 9, 2002. The record reveals that the applicant filed an initial Form I-821, Application for Temporary Protected Status, with the California Service Center on April 23, 2001, under CIS receipt number WAC 01 187 50065. The applicant subsequently filed a second Form I-821 with the Nebraska Service Center on September 9, 2002 under CIS receipt number LIN 02 290 50288.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On January 27, 2004, the director of the Nebraska Service Center issued a Notice of Intent to Deny affording the applicant the opportunity to submit: evidence to establish entry into the United States prior to February 13, 2001; continuous residence in the United States since February 31, 2001; continuous residence in the United States since March 9, 2001; and, an official photo identification document. The applicant, in response, provided the following:

1. a photo identification card from the Hollywood Community Adult School in Hollywood, California, issued on March 21 2002;
2. an Xcel Energy bill with a due date of January 16, 2004;
3. a Legal Services Contract between the applicant and [REDACTED] dated February 22, 2001;
4. five Denver County Court Receipts for payment of court costs and moving violation fines dated April 18, 2002; May 10, 2002; July 15, 2002; August 13, 2002; and March 17, 2003;
5. Colorado Registration/Ownership Tax Receipts dated May 16, 2002 and June 19, 2002, respectively;
6. a Farmers Insurance automobile insurance cancellation notice dated August 19, 2002;
7. a State of Colorado Order of Suspension of the applicant's driver's license dated April 30, 2003, effective until May 2, 2004;
8. a [REDACTED] (Rights of the Accused) form from the Municipal Court, City and County of Denver, Denver, Colorado, dated January 28, 2003;
9. an undated "Notice To Defendants In Custody" from [REDACTED] County Court Judge, Arapahoe County, Eighteenth Judicial District, State of Colorado, ordering the applicant, upon release from the county jail, to report to the Alternative Services Office to sign up for 80 hours of community service and report to the Clerk's Office to pay \$727 in fines and court costs (Case [REDACTED] along with a notice indicating that an outstanding judgment/warrant against the applicant in connection with Case [REDACTED] Ticket Number [REDACTED] was released on August 22, 2003;
10. a 1st Bank monthly checking account statement dated October 14, 2003;

11. photocopies of the applicant's Employment Authorization Cards valid from: June 19, 2001 to September 9, 2002; September 10, 2002 to September 9, 2003; and August 1, 2003 to March 9, 2005, along with a photocopy of the applicant's Social Security Card and his Colorado Driver's license with an illegible date of issue;
12. a photocopy of the applicant's Salvadoran passport issued by the Salvadoran Consulate in Los Angeles, California, on February 23, 2004;
13. a receipt dated February 22, 2001, indicating that the applicant paid [REDACTED] for the filing of a Form I-130, Petition for Alien Relative; and,
14. an Order for Commitment to Jail dated February 27, 2003 signed by [REDACTED] indicating that the applicant pled guilty to "NVOL" and "NPOI 4th" in violation of the Colorado Revised Statutes, and ordering the Sheriff of Arapahoe County to confine the applicant in the Arapahoe County Jail for a period of 30 days.

The Director of the Nebraska Service Center determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States prior to November 2001. The director, therefore, denied both TPS applications on March 22, 2004, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods.

On appeal, the applicant states that during the period from March 20, 2001 to August 27, 2001, he was a "self-employed mechanic" doing side jobs for family, friends, and neighbors. He submits substantial documentation establishing his residence and physical presence in the United States in 2002 and 2003. Since the director determined that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States prior to November 2001, this evidence will not be listed or addressed. The applicant submits the following evidence relating to his residence and physical presence in the United States prior to November 2001: a Form G-28, Notice of Entry of Appearance of Attorney or Representative, signed by the applicant and [REDACTED] on February 22, 2001; a letter from the Social Security Office dated July 9, 2001, acknowledging receipt of the applicant's application for a Social Security Card; a photocopy of a Western Union Money Order dated February 26, 2001, in the amount of \$110 payable to "U.S. Immigration & Naturalization Service" listing [REDACTED] as the purchaser; a photocopy of a Form I-797C approval notice relating to the applicant's Form I-765, Application for Employment Authorization, filed on May 28, 2001; and, a photocopy of a Form I-130 filed on the applicant's behalf by [REDACTED] a lawful permanent resident (CIS registration number [REDACTED]).

The record contains a Form I-130 that was filed on the applicant's behalf by [REDACTED] on March 19, 2001, and approved by the Director of the California Service Center on November 29, 2002. The Form I-130 was signed by Ms. [REDACTED] and by [REDACTED] on February 22, 2001. The record also contains a receipt signed by Ms. [REDACTED] on February 22, 2001, and the Form G-28 signed by the applicant and Ms. [REDACTED] on February 22, 2001.

In view of the foregoing, it is concluded that the applicant has submitted sufficient evidence to establish continuous physical presence in the United States since March 9, 2001, and this ground for denial of the application has been overcome.

The applicant has submitted evidence to establish his residence in the United States as early as February 22, 2001. The only evidence submitted to establish the applicant's continuous residence in the United States prior to that date is a letter dated April 2, 2001, from [REDACTED] stating that the applicant "entered the United States of American on December 20, 2000, to the best of my knowledge." Mr. [REDACTED] does not provide any information regarding the dates of his acquaintance with the applicant or the basis of his knowledge, nor does he provide the applicant's address(es) in the United States since he became acquainted with the applicant. This affidavit alone is insufficient to establish the applicant's continuous residence in the United States prior to February 22, 2001. The applicant has not provided any contemporaneous evidence to support this single affidavit.

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 determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence requirement described in 8 C.F.R. § 244.2 (c). Consequently, the director's decision to deny the application for temporary protected status on this basis will be affirmed.

It is noted that the applicant appears to have pled guilty to two criminal offenses in the Superior Court of Colorado, City and County of Denver, and sentenced to 30 days in the county jail, ordered to perform 80 hours of community service upon his release from jail, and ordered to pay \$747 in fines and court costs. These offenses must be addressed in any future proceeding before CIS.

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.