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



U.S. Citizenship  
and Immigration  
Services

M1

FILE:

[REDACTED]  
[SRC 02 080 54165]

Office: Nebraska Service Center

Date: DEC 08 2005

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 his qualifying continuous residence and his continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant, through counsel, asserts his claim of eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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. 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 September 9, 2006, 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 reveals that on October 17, 2003, the applicant was arrested and charged by the Minneapolis Police Department with "PC: Hit and Run."

On May 27, 2004, the applicant, through counsel, was requested to submit the final court disposition for the charge detailed above. The applicant was also requested to submit evidence establishing his date of entry prior to February 13, 2001, his residence in the United States since February 13, 2001, and his physical presence in the United States from March 9, 2001. In response, counsel submitted the following documentation:

- 1) Copies of the applicant's Minnesota Identification Card bearing an expiration date of February 15, 2007;
- 2) A copy of a single MoneyGram bearing a date of January 29, 2001;
- 3) A copy of a cash receipt dated November 24, 2001, from Home Depot in Dallas, Texas; and,
- 4) A case history report from the Hennepin County Criminal Courts dated June 24, 2004, reflecting that the applicant plead guilty to Hit and Run, and paid a fine of \$138.00.

The director determined that the applicant had failed to submit sufficient evidence to establish his residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001, to the date of filing his application. Therefore, the director denied the application on July 26, 2004. The director stated that the applicant has submitted sufficient evidence of entry into the United States prior to February 13, 2001.

On appeal, the applicant, through counsel, states he is unable to obtain proof of his residence and employment because he lived with friends. The applicant further states that he does not have any rental agreements or leases in his name, and that he has worked for cash in the past. The applicant also states that he hopes to send an affidavit or letter from an acquaintance who moved to Miami, Florida. However, as of the date of this decision, no additional evidence has been provided. Therefore, the record will be considered complete.

A review of the record reflects that the MoneyGram as detailed in No. 2 above, contains discrepancies in the amount transferred as well as the date of the transaction. 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 has failed to submit any objective evidence to explain or justify the discrepancies of the document noted above.

Further, the applicant did not submit any additional evidence in support of his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant claims to have lived in the United States since December 1999. It is reasonable to expect that the applicant would have some type of evidence to support his continuous residence and continuous presence in the United States during the requisite time periods. 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 applicant has failed to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.