

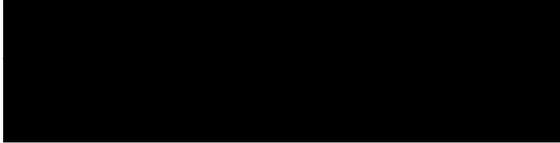
Identifying data deleted to
protect identity of unrepresented
applicants

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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 25 2005
[LIN 02 278 51665]

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, 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 establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to appear for fingerprinting within the required time. The director, therefore, denied the application.

On appeal, the applicant asserts that he responded to the request for additional information. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 shows that the applicant filed his TPS application on September 4, 2002. On January 10, 2003, 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 failed to respond to the notice. The director, therefore, denied the application.

On appeal, the applicant states that he sought assistance after receiving the request for more evidence. He states that the person assisting him told him that he had sent all of the proof. However, CIS is not responsible for the inaction of the applicant's representative. The applicant also states that he misunderstood the date for having his fingerprints taken. The applicant submits the following documentation:

1. A copy of the Fingerprint Notification dated January 15, 2003.
2. Copies of 2000, 2001, and 2002 Internal Revenue Service Form W-2 Wage and Tax Statements.

3. Copies of Social Security Administration Retirement, Survivors, and Disability Insurance Requests for Employee Information dated April 7, 2001 and March 23, 2002.
4. Statements from [REDACTED] and [REDACTED]
5. A copy of the applicant's rent history from November 25, 2000 to July 24, 2001.

The applicant states that he misunderstood the date on the Fingerprint Notification and thought he had until December 4, 2003 to have them taken, instead of April 12, 2003. (12/4/03 instead of 04/12/03). However, there is nothing in the record to indicate that the applicant has ever had his fingerprints taken. Ms. [REDACTED] Office Manager for the Country Club of Blue Springs, Blue Springs, Missouri states that her company employed the applicant from October 2000 until May 2001, and again from January 7, 2002 until January 27, 2002. This statement 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 affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties of employment. The 2001 and 2002 Form W-2s indicate the applicant was present in the United States in those years. Similarly, the Social Security Administration documents only indicate the applicant's presence in the United States in 2000, 2001 and 2002. These documents cannot establish that the applicant had continuously resided in the United States since February 13, 2001 and was continuously physically present in the United States from March 9, 2001 to September 4, 2002, the filing date of the application.

Mr. [REDACTED] Manager of Interstate Inn, Blue Springs, Missouri states that the applicant resided at his establishment from February 1, 2001 to July 31, 2001. The rent history indicates the applicant resided at the hotel from November 25, 2000 to July 24, 2001. Even accepting, Mr. [REDACTED]'s statement as true, he can only attest to the applicant's presence in the United States up to July 31, 2001. This does not establish the applicant's continuous residence and continuous physical presence during the qualifying periods.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). In addition, the applicant has not established that he appeared to have his fingerprints taken. 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 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.