



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[LIN 02 213 50917]

Office: NEBRASKA SERVICE CENTER

Date: **OCT 31 2005**

IN RE:

Applicant:



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
Handwritten signature of Robert P. Wiemann in black ink.

Robert P. Wiemann, Director
Administrative Appeals Office

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

Upon review of the record of proceeding, the AAO concurred with the director's conclusion and dismissed the appeal on April 29, 2003.

On motion to reopen, the applicant states that he did not receive the request for additional evidence because he had moved. According to the applicant he will send the requested evidence. It is noted that the applicant submitted evidence to the Texas Service Center that was returned on October 9, 2003 and subsequently resubmitted to the Nebraska Service Center. However, this evidence did not establish the applicant's continuous residence and continuous physical presence in the United States during the qualifying period.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a statement from the applicant and resubmission of evidence previously provided. As such, the issue on which the underlying decisions were based has not been overcome on motion.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The decision of the AAO dated April 29, 2003, dismissing the appeal, is affirmed.