



U.S. Citizenship  
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Services

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Office: NEBRASKA SERVICE CENTER

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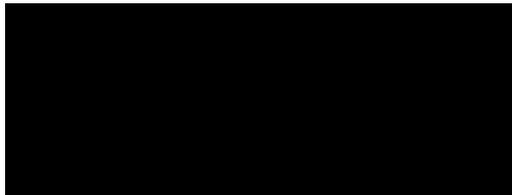
Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 Robert P. Wiemann, Chief  
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, therefore, denied the application.

On appeal, counsel for the applicant asserts that the director erred in denying the application. The applicant also submits additional 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 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, with the latest extension granted until September 9, 2006, upon the applicant's re-registration during the requisite 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 November 26, 2001. On January 27, 2002, the applicant was provided the opportunity to submit evidence establishing date of entry and continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

1. A copy of a State of Washington Application for Specialized Forest Products Harvesting Permit dated October 21, 1999.
2. A copy of an identification card from Fordel, Inc. for 1995.
3. Copies of money order receipts dated July 1998, July 1, 1999 and July 30, 1999.
4. Copies of an El Salvadoran identification card, [REDACTED] the first page of his passport, a State of Washington identification card, an employment authorization card issued on January 17, 2004 and a Social Security card.
5. A Calls & Requisitions report dated September 24, 1999.
6. A Grays Harbor College Student Transcript Report dated February 11, 2004.

[REDACTED]

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the evidence of record at the time of the director's denial established the applicant's eligibility for TPS. According to counsel, there was a misunderstanding surrounding the applicant's date of last entrance, continuous residence and continuous physical presence in the United States. The applicant also submits a personal statement, statements from [REDACTED] [REDACTED] copies of two money orders dated June 11, 2001, and, a pay stub [REDACTED] dated August 8, 2001.

The State of Washington application, the Fordel identification card, the money orders submitted in response to the notice of intent to deny, and the Calls & Requisitions report are all dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence in the United States. The passport indicates that it was issued, and signed by the applicant, in El Salvador on February 6, 2001. On appeal, the applicant states that he has not left the United States since he arrived in December 2000. However, as discussed above, the applicant's passport was signed by the applicant and issued in El Salvador on February 6, 2001. The applicant also states in a note submitted with his application that he left the United States and returned in December 2001. These discrepancies have not been satisfactorily explained. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

[REDACTED] the applicant's mother, states that the applicant lived with her from December 2000 to May 2001 and from August 2001 to October 2001. [REDACTED] that she has known the applicant since 1996. Ms. [REDACTED] she has known the applicant since 1995. However, these statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Furthermore, the applicant and his mother state that the applicant left his mother's house for the last time in October 2001, while counsel indicates that the applicant lived with his mother until September 2002. [REDACTED] that she has known the applicant since 1996 but she does not state where she met him. [REDACTED] that she has known the applicant since she met him in Aberdeen, Washington in 1995. The applicant and counsel however, state that the applicant first arrived in the United States in December 2000. These discrepancies also have not been satisfactorily explained. As stated above, 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.

The money order submitted on appeal, indicates a date of June 11, 2001, and is the earliest date presented, of the remaining evidence of the applicant's presence in the United States.

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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted, the record reflects the applicant was arrested as follows: (1) by [REDACTED] sheriff's Office on April 3, 2000 and charged with DUI GH2 OIN; (2) by the [REDACTED] Sheriff's Office on November 20, 2003 and

charged with Driving Under the Influence; (3) by ██████████ Sheriff's Office on February 4, 2004 and charged with Forest/Forest Products Violation, Criminal Trespass 2, and Theft 3; (4) and, by ██████████ Sheriff's Office on January 4, 2005 and charged with Driving Under the Influence. CIS must address these arrest and/conviction(s) in any future proceedings.

It is further noted that the record reflects that the applicant was arrested by the U.S. Border Patrol on March 3, 2000 and placed in removal proceedings.

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.