



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]
[WAC 01 265 55782]

Office: NEBRASKA SERVICE CENTER

Date: JUL 05 2006

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, 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 requests that the appeal be sustained and the applicant be granted TPS. 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 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 at the California Service Center, on August 6, 2001. On October 21, 2003, the applicant was provided the opportunity to submit evidence establishing 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 the following documents:

1. A copy of a lease agreement signed on March 4, 2000.
2. Copies of hand-written generic receipts dated March 1, 2000, May 1, 2000 and June 4, 2000.
3. A copy of a January 2001 newsletter sent to the applicant's residence and a copy of an envelope addressed to the applicant dated August 25, 2000.
4. A medical statement dated January 11, 2000.
5. A copy of the applicant's United States nonimmigrant visa, with entry stamps of March 23, 1999 and September 6, 1999.
6. A copy of the applicant's birth certificate with English translation.

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 requests that the appeal be sustained and the applicant be granted TPS. The applicant also submits the following evidence:

7. Copies of pay stubs from [REDACTED], dated for pay periods ending December 31, 2000, January 31, 2002, and February 15, 2001.
8. Copies of envelopes date-stamped August 25, 2000, April 2, 2001, April 24, 2001, July 6, 2001, July 20, 2001, August 29, 2001, September 8, 2001, October 24, 2001, November 3, 2001, December 20, 2001, May 1, 2002, May 10, 2002, July 10, 2002, July 18, 2002, October 30, 2002, December 20, 2002, August 25, 2003, September 12, 2003, October 31, 2003, and December 4, 2003.
9. A copy of a Rental Agreement and a certificate of Membership dated September 19, 2002 in Spanish, with no English translation.
10. Copies of medical documents dated December 2, 2002, January 6, 2003, May 14, 2003, May 19, 2003, June 2, 2003, and August 25, 2003.
11. Copies of a MetLife document dated August 1, 2003, and a Marriott document dated November 24, 2003.

The evidence provided by the applicant in response to the notice of intent to deny establishes that the applicant was present in the United States prior to February 13, 2001. Similarly, two of the pay stubs and one of the date-stamped envelopes indicate the applicant was present in the United States before February 13, 2001. However, these documents cannot establish the applicant's continuous residence from February 13, 2001 and continuous physical presence from March 9, 2001. Specifically, the applicant has not presented any evidence for the period from February 16, 2001 to April 2, 2001.

The pay stubs included in the evidence presented on appeal, list the applicant's Social Security number as [REDACTED] and indicate the applicant was present in the United States during those pay periods. However, the applicant indicated on his TPS application that he does not have a Social Security number. This discrepancy has 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). Of the remaining evidence submitted on appeal, one of the date-stamped envelopes indicates a date of April 2, 2001, and is the earliest date presented, on appeal, as evidence of the applicant's presence in the United States. Therefore, the evidence presented on appeal cannot establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application.

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.

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.