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[REDACTED]

FILE: [REDACTED]
[LIN 02 266 52448]

Office: NEBRASKA SERVICE CENTER

Date: JUN 14 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center (NSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number LIN 01 185 51533. The NSC Director denied that application on March 7, 2002, due to abandonment because the applicant failed to respond to a request for evidence in connection with the application. After a review of the record, the Chief, AAO, concurs with the director's denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on August 19, 2002, also during the initial registration period, and indicated that he was re-registering for TPS. The NSC director treated the application as an initial application for TPS and denied the application on January 14, 2003, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant filed his current appeal from that decision on February 14, 2003.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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).

On September 20, 2002, the applicant was requested to submit evidence establishing his identity and nationality, as well as his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted evidence of his nationality and identity, as well as photocopies of the following documentation:

- (1) A check issued to him on November 15, 2002;

- (2) His Michigan identification card;
- (3) An apartment rent receipt for the period November 1, 2002, to November 30, 2002;
- (4) His Employment Authorization Document (EAD) valid from July 17, 2001, to September 9, 2002; and,
- (5) His Social Security Card.

The director determined that the applicant had failed to submit sufficient evidence of his qualifying continuous residence and continuous physical presence in the United States, and denied the application on January 14, 2003.

On appeal, the applicant states that he entered the United States as a sixteen-year old and has very little evidence of his stay here because he was put to work, never went to school, and lived wherever he could find a place. In support of the appeal, the applicant submits photographs, generic rent receipts dated July and August 2002, and an employment letter, dated December 17, 2002.

The applicant claims to have lived in the United States since November 14, 1999. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. However, the only documentation submitted is dated after the required dates.

A review of the record indicates that the applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

It is noted that as a result of being fingerprinted in connection with his application, a Federal Bureau of Investigation report reflects that the applicant was placed in removal proceedings on November 2, 1999.

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.