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U.S. Citizenship
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[REDACTED]

FILE:

Office: Nebraska Service Center

Date:

[LIN 01 132 50586]
[LIN 03 259 50867]
[LIN 04 151 50241]

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 initial application was denied by the Director, Nebraska Service Center (NSC). A subsequent application for TPS was denied by the Director, NSC, and is currently before the Administrative Appeals Office (AAO) on appeal. The initial application will be reopened, *sua sponte*, by the Chief, AAO, and the appeal will be sustained.

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 applicant filed the current Form I-821, Application for Temporary Protected Status, on November 29, 2002. The director denied this application because the applicant failed to establish his eligibility for TPS late registration as well as his qualifying continuous residence and continuous physical presence in the United States.

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.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

On appeal, the applicant states that he has lived in the United States since October 1998, and that he had provided evidence to substantiate his claim of eligibility for TPS. Along with his appeal, the applicant submits copies of the following: two utility billing statements dated June 4, 1999 and August 8, 1999; two Western Union money transfer receipts dated August 7, 1999 and October 2, 1999; a hand-written receipt dated July 2, 1999; and, a receipt dated December 2, 1998.

The record reveals that the applicant filed his initial application [LIN 01 132 50586] on March 12, 2001. On May 2, 2001, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. At that time, the director determined that the record did not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on September 8, 2001.

A review of the record of proceedings reflects that the applicant responded to the director's request for evidence before the director's decision to deny the initial application. The applicant, in response, provided copies of utility bills dated July 7, 1999, April 3, 2001, April 11, 2001, and May 3, 2001; an employee award certificate dated May 18, 2000; an earnings statement reflecting an ending date of February 25, 2001; a hand-written receipt dated July 2, 1999; and a Western Union money transfer receipt dated April 3, 1999.

The record of proceedings contains sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. Given that the record fails to reflect any other ineligibility issues, the director's decision to deny the current application will be withdrawn and the application will be approved.

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 met this burden.

ORDER: The appeal is sustained.