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U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

NOV 29 2007

[LIN 02 271 50663

[LIN 03 231 54326, *appeal*]

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 Nebraska Service Center. 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 (NSC), 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 two notices were sent to the applicant under receipt numbers LIN 03 036 50740 and LIN 02 271 50663. According to counsel, the applicant responded to the notice under receipt number LIN 03 036 50740. Counsel requests that the two cases be consolidated and the evidence be reconsidered.

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 March 9, 2009, 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 initial TPS application on August 23, 2002 under Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) receipt number LIN 02 271 50663. On January 23, 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 director determined that the applicant failed to respond to the notice. Therefore, on July 22, 2003, the director denied the application.

On appeal, counsel for the applicant states that the director issued two notices dated January 23, 2003, under two different receipt numbers: LIN 02 271 50663, and LIN 03 036 50740, respectively. According to counsel, the applicant responded to the notice under receipt number LIN 03 036 50740. Counsel is correct that two different notices were issued; however, the second notice dated January 23, 2003, referred to a separate TPS application, filed by the applicant on November 8, 2002, under CIS receipt number LIN 03 036 50740. The applicant's appeal of the denial of that application will be addressed in a separate decision.

The director stated in the July 22, 2003 decision denying the TPS application filed under receipt number LIN 02 271 50663, that the applicant had not responded to the January 23, 2003 request for evidence; however, the record reflects that additional evidence, including documentation previously provided, had been submitted in response to

that notice. It does not appear that the director examined the evidence provided by the applicant. Therefore, the AAO will consider all of the evidence contained in the record of proceeding.

The applicant has submitted the following documentation in support of his claim of eligibility for TPS:

1. Copies of State of Washington identification cards issued on October 16, 1996 and November 14, 2001.
2. A letter from [REDACTED] dated August 7, 2002.
3. Copies of envelopes addressed to the applicant which are date-stamped June 11, 1998, February 17, 1999, and September 17, 1999, as well as several envelopes with illegible and unreadable dates.
4. Copies of pay reports for [REDACTED] from an unknown source, with dates of April 29, April 30, May 1, May 2, May 3, July 26, July 29, July 30, July 31, and August 1 with no years shown as part of the dates.
5. Copies of money transfer receipts from RIA dated July 1, 2002 and August 4, 2002.
6. A statement from [REDACTED] Auto Servicar, indicating the applicant had been employed there from January 2002 through July 2002.
7. A statement from SeaMar indicating the applicant had received treatment at that facility on October 1, 1998 and October 29, 1998.

stated that the applicant worked for her as a gardener at her home from June 1999 to January 2000; however, she did not provide the address where the work was performed or state where the applicant resided during his period of employment. Similarly, the statement from [REDACTED], Auto Servicar, does not provide an address for the applicant. Therefore, these statements have little evidentiary weight or probative value as they do not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). In addition, the pay receipts do not include the year(s) of employment; the applicant's full name; or the employer's name, and are of no probative value. While the 1996 Washington State identification card, the date-stamped envelopes, and the SeaMar statement indicate the applicant was present in the United States at some time prior to February 13, 2001; they can not establish the applicant's continuous residence and continuous physical presence in the United States during the requisite period. Other than the Washington State identification card dated November 14, 2001 and the two RIA receipts, the applicant has not submitted any credible evidence to establish his continuous residence in the United States from February 13, 2001 and his continuous physical presence in the United States from March 9, 2001 to August 23, 2002, the date he filed the initial 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.