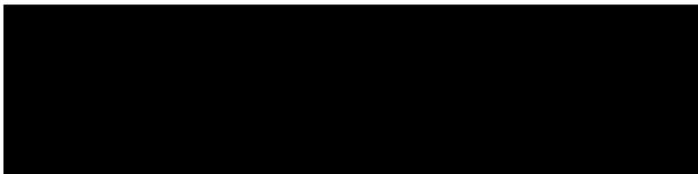




U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy



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FILE:



OFFICE: NEBRASKA SERVICE CENTER

DATE: OCT 02 2007

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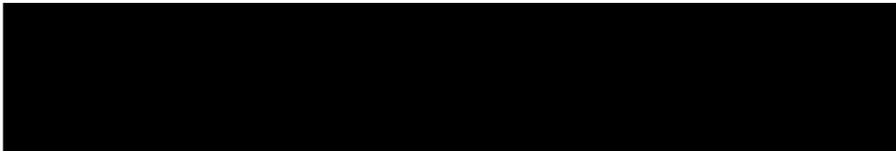
Applicant:



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 California Service Center. 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 denied the application because the applicant had failed to establish that he had entered the United States prior to February 13, 2001, that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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 § 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 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.

The term *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.

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 valid until March 9, 2009, 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).

The record shows that the applicant filed her TPS application on July 5, 2002. In a Notice of Intent to Deny dated January 18, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001, as well as his date of entry into the United States. The director addressed in his decision the evidence furnished by the applicant in response to the NOID, including the affidavits from three people, and stated that affidavits are not acceptable forms of evidence unless supported by probative evidence. The director concluded that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 14, 2003.

On appeal, the applicant asserts his eligibility for TPS. He cites several sections of the Code of Federal Regulations (C.F.R.) pertaining to TPS applicants, and states that he has met all of the criteria. He submits the following documentation:

1. A statement dated April 25, 2003, from [REDACTED], Sioux Falls, South Dakota, indicating that the applicant had been residing with him since October 25, 2000, and that he had been in his residence since he came to the United States.
2. A statement dated April 25, 2003, from [REDACTED] indicating that she met the applicant in December 2000, and that the applicant is her husband. She included a copy of a State of South Dakota marriage license and a marriage certificate reflecting that she and the applicant were married in Sioux Falls, South Dakota, on November 16, 2002; a copy of a South Dakota identification card issued to [REDACTED] which shows a validity period from January 28, 1999 through January 1, 2004; and a copy of an Employment Authorization Card issued to [REDACTED], valid from January 21, 2003 through September 9, 2003.

The statements from [REDACTED] (Nos. 1 and 2 above) were not notarized or attested to under penalty of perjury, nor were the statements, provided to establish the applicant's qualifying residence in the United States, supported by any other corroborative evidence. While [REDACTED] indicated that the applicant resided with him at his residence since October 25, 2000, there is no evidence in the record that the applicant had ever claimed to have resided at the address listed by [REDACTED]. Moreover, it is noted that the applicant submitted with his initial application a copy of an El Salvadoran national identity document (Cedula) issued to him in El Salvador on December 15, 2001, thereby precluding a favorable finding to his eligibility for TPS. It appears the applicant was not present in the United States during the requisite period required to establish continuous residence and continuous physical presence during the requisite period.

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). Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has failed to provide sufficient credible evidence to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application 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.