

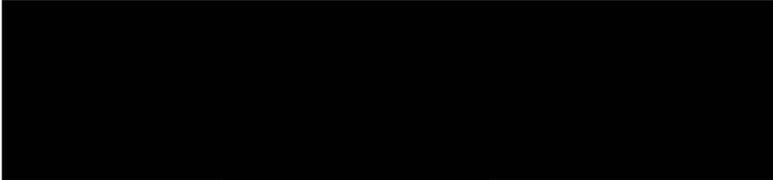
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm 3000  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



FILE:

[LIN 01 170 50965]

Office: Nebraska Service Center

Date: **APR 04 2008**

INRE:

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 office that originally decided your case. 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). A subsequent appeal was dismissed by the Director, now Chief, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen 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 on November 1, 2001, because the applicant failed to establish his qualifying residence in the United States. A subsequent appeal from the director's decision was dismissed on March 15, 2002, after the AAO also concluded that the applicant had failed to establish his qualifying continuous residence in the United States. On April 15, 2002, the applicant filed an motion to reopen which is now before the AAO.

On motion to reopen, the applicant reasserts his claim of eligibility for TPS. The applicant also submits two letters.

The record also reflects that the applicant filed a subsequent TPS application on September 9, 2002, under receipt number LIN 0300852175. The director denied that application on April 13, 2003.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.

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 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 of proceedings reflects that the applicant submitted the following documentation along with his TPS application:

- 1) A copy of a receipt dated January 22, 2001.
- 2) A copy of an envelope addressed to the applicant in the United States bearing a post-mark date of December 10, 2000.
- 3) Two envelopes addressed to the applicant in the United States bearing post-mark dates of March 6, 2001, and March 19, 2001.

- 4) An affidavit dated November 9 2001, from [REDACTED] stating that the applicant has resided at [REDACTED], in Emporia, Kansas, during the months of February and March 2001.
- 5) An affidavit dated January 31, 2003, from [REDACTED] who stated that the applicant lived at [REDACTED], in Emporia, Kansas, from February 2001 to December 2002.
- 6) Two hand-written rental receipts from [REDACTED] dated August 2, 2002, and September 30, 2002, for "Apt. B."
- 7) A letter dated February 4, 2003, **from**. reflecting that the applicant sent funds to El Salvador from the United States from April 2002 to January 2003.
- 8) A copy of an employee identification card issued on October 5, 1998, from IBP, Incorporated **City**, Nebraska, bearing the name of [REDACTED] (Social Security number [REDACTED])
- 9) An employment letter dated August 30, 2002, from [REDACTED] Personnel Clerk for IBP, Incorporated in Emporia, Kansas, indicating that [REDACTED] had been employed since October 5, 1998.
- 10) A certificate dated October 8, 1999, awarded to [REDACTED], from IBP, Incorporated.
- 11) A copy of an envelope address to [REDACTED] and bearing a postmark date of April 2, 1999.
- 12) A copy of a hand-written rent receipt dated January 3, 2001.
- 13) A copy of an affidavit dated November 12, 2001, from [REDACTED] who stated that the applicant lived in Emporia, Kansas, in February and March 2001.
- 14) A copy of a birth certificate and baptism certificate of the applicant's daughter born on April 3, 2001, in Emporia, Kansas.
- 15) Copies of four hand-written rent receipts dated July 30, 2001, August 31, 2001, October 1, 2001, and November 1, 2001, bearing the name **OFFICE**
- 16) A copy of a Ria money transfer receipt dated February 8, 2002.
- 17) Copies of two utility bills dated March 13, 2002, and June 11, 2002, bearing the name of [REDACTED]
- 18) A copy of a hand-written rent receipt dated March 1, 2002, bearing the name of [REDACTED]
- 19) Copies of two earnings statements from IBP, Incorporated, dated June 22, 2002, and August 24, 2002, which do not bear any name.

Along with his motion, the applicant provides the following:

- 20) A letter dated April 8, 2002, from **stating** that the applicant had resided **at** **I** [REDACTED] in Emporia, Kansas, from January 1, 2001.
- 21) A church letter dated March 31, 2002, from [REDACTED] pastor of St. Catherine of Alexandria Catholic Church, in Emporia, Kansas, who stated that the applicant is a resident of Emporia and a member of the parish.

A review of the record of proceedings shows that the applicant submitted documentation bearing the name of [REDACTED] However, the applicant has not submitted credible evidence to establish the legal use of the

alias [REDACTED]. Additionally, the applicant provided copies of his El Salvadoran government issued birth certificate and national identity card bearing the name "[REDACTED]", As such, only documentation bearing his name of "[REDACTED]", will be considered in these proceedings.

The letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests.

The record of proceedings contains a copy of an envelope bearing a postmark date of "December 10, 2000" addressed to the applicant at [REDACTED], in Emporia, Kansas. In addition the applicant submitted a copy of a receipt dated January 22, 2001, which reflects the applicant resided at [REDACTED] in Emporia, Kansas. However, in his letter dated April 8, 2002 [REDACTED] stated that the applicant resided at [REDACTED] in Emporia, Kansas, beginning on January 1, 2001. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, this issue on which the underlying decision was based has not been overcome on motion.

It is also noted that the applicant was apprehended by the United States Border Patrol on April 27, 1998, near El Paso, Texas, while attempting to enter the United States illegally. The applicant was ordered removed by an Immigration Judge on May 28, 1998. The applicant subsequently departed the United States on June 25, 1998.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

**ORDER:** The motion to reopen is dismissed. The previous decision of the AAO dated May 2, 2007, is affirmed.