

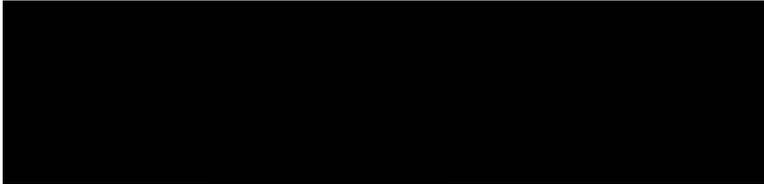


U.S. Citizenship
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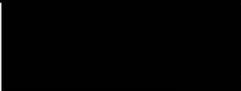
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FILE:



Office: NEBRASKA SERVICE CENTER

Date: FEB 07 2008

[consolidated herein]

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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 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 (NSC). An appeal was treated as a Motion to Reopen and was denied again by the Director, NSC. The applicant appealed the director's decision on the motion and it is now before the Administrative Appeals Office (AAO) 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 initially 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 March 13, 2002.

The applicant untimely appealed the director's decision on September 9, 2003, and submitted the requested court documents surrounding his arrests, and submitted evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period¹. The Director, NSC, did not forward the appeal to the AAO, but treated the appeal as a motion to reopen.

The director determined that the motion was filed untimely and dismissed the motion on February 10, 2004. The applicant filed a subsequent appeal of the motion on March 4, 2004.

On motion to reopen, the applicant reasserted his claim of eligibility for TPS but failed to submit any evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's motion to reopen consists of a statement from the applicant and resubmission of evidence previously provided and considered. As such, the issue on which the underlying decisions were based has not been overcome on motion.

The applicant submitted a TPS application (EAC 06 278 70452) and an employment authorization application (EAC 06 278 70453) on July 5, 2006. It is noted that the employment authorization (EAD) was approved² and issued on January 16, 2007. However, this application incorrectly indicates the applicant was applying under "AI2" classification under 8 CFR § 274a, but should bear the "CI9" classification instead, as the underlying TPS application was never approved.

¹ The applicant submitted a subsequent TPS application on September 9, 2002, but prior to all decisions. 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. There is nothing in the record to indicate that the applicant appealed the director's decision.

² An EAD was also approved in error in 2007 with incorrect classification.

It is also noted that the applicant was ordered deported to El Salvador in 1988 and again placed in removal proceedings in 2001.

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 decisions of the NSC Director. Accordingly, the appeal will be dismissed and the previous decisions will not be disturbed.

ORDER: The appeal is dismissed. The previous decisions of the Director, Nebraska Service Center dated March 13, 2002 and February 10, 2004, are affirmed.