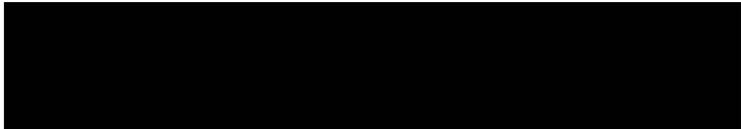




U.S. Citizenship  
and Immigration  
Services

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**prevent clear unwarranted**  
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FILE: [REDACTED]  
[LIN 03 015 52063]

Office: Nebraska Service Center

Date: FEB 28 2008

INRE: 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: Self-represented

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, Director  
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 The director's decision will be withdrawn and the applicant's appeal will be sustained.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 director denied the application because the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that he entered the United States on February 27, 2000, at Douglas, Arizona. The applicant submits additional evidence and requests that his application 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 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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the TPS designation has been granted with validity 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).

On January 21, 2003, the applicant was requested to submit: (1) a copy of his birth certificate, with English translation; (2) a photo identification document; (3) evidence that he entered the United States before February 13, 2001; (4) evidence to establish his continuous residence in the United States since February 13, 2001; and (5) evidence to establish his continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted the following documentation:

- 1.) an identification card issued to the applicant by the state of Nebraska on January 7, 2002;
- 2.) an identification card in the applicant's name, issued by \_\_\_\_\_
- 3.) an identification card in the applicant's name, issued by \_\_\_\_\_
- 4.) a copy of a Nebraska Racing Commission License in the applicant's name, issued on August 18, 2000;
- 5.) an undated identification card, #\_1, issued to the applicant by the Tribunal Supremo Electoral in El Salvador; and,
- 6.) an El Salvadoran identification document, #\_ , issued to the applicant in February 1997.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 27,2003.

On appeal, the applicant reasserts his claim and submits the following documentation:

- 7.) pay statements, issued by Excel Corporation, issued to the applicant for the pay periods ending on January 26,2002, February 9, 2002, and February 16,2002;
- 8.) a Vacation Preference Form from Excel Corporation, which indicates the applicant's beginning service date as December 3,2001;
- 9.) envelopes addressed to the applicant in the United States, postmarked February 3, 2001, March 20,2001, and March 28,2001;
- 10.) a form dated July 20, 2000, which appears to have been issued by REA;
- 11.) a pay statement, issued by Starostka Group Co., for the pay period from April 8, 2001 to April 14, 2001;
- 12.) a pay statement for the period from January 31, 2002 to February 2, 2002;
- 13.) a copy of a marriage license and marriage certificate, which reflect that the applicant was married in the County of Platte, Nebraska, on January 18,2002;
- 14.) a copy of a November 26, 2001 letter to the applicant from his employer, Excel, informing him that the Social Security number he had provided to the company, ~~SSN~~ did not match the records at the Social Security Administration; and,
- 15.) a copy of a March 26, 2001 letter to the applicant from the Hall County Attorney's Office, Grand Island, Nebraska, informing him that he would be subpoenaed to testify as a witness at a trial on April 9, 2001, pertaining to an incident on September 24,2000.

The record contains a Form 1-862, Notice to Appear, dated September 1, 2000, which indicates that the applicant was found removable under Section 212 (a)(6)(A)(i) of the Act, as an alien present in the United States without being admitted or paroled. Based upon the final order of an immigration judge, the applicant was ordered removed from the United States on September 7, 2000. A Form 1-205, Warrant of Removal/Deportation, was issued on September 12, 2000. On October 16, 2000, the Assistant District Director For Investigations, Omaha District, requested the Assistant District Director For Examinations, Omaha District, to grant the applicant work authorization for a period of one year. The assistant district director stated that he was requesting the work authorization because the applicant was a material witness to an incident involving INS detainees at a Nebraska state facility on September 24, 2000, and he would be needed for court testimony at a lengthy trial. An employment authorization document, valid for one year, was issued to the applicant on October 23, 2000, pursuant to Section 274a.12(c)(18). The applicant was ordered released under an Order of Supervision, issued on October 24, 2000. On appeal, the applicant furnishes a copy of a letter from the Hall County Attorney's Office, Grand Island, Nebraska, described in No. 15, above, informing the applicant that he would be subpoenaed to testify as a witness at a trial on April 9, 2001. The record does not confirm that the trial was held on April 9, 2001, or whether it was continued and the applicant remained under the Order of Supervision. However, it does not appear that an additional employment document was subsequently issued to the applicant.

Therefore, in this case, the evidence in the record supports the applicant's claim to have continuously resided in the United States from February 13, 2001, and to have been continuously physically present since March 9, 2001. There are no other known grounds of ineligibility; therefore, the director's decision will be withdrawn and the appeal will be sustained.

An alien applying for TPS 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 director's decision is withdrawn and the appeal is sustained.