

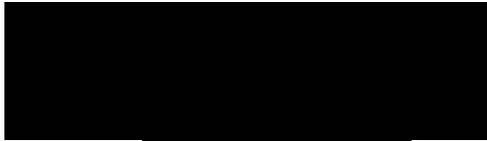


**U.S. Citizenship
and Immigration
Services**

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prevent clearly unwarranted
invasion of personal privacy**

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FILE:



Office: Nebraska Service Center

Date:

JUL 07 2008

[LIN 03 025 50004]

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:

SELF-REPRESENTED

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.

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 case will be remanded to the director for further action.

The applicant is a native and citizen of El Salvador who initially submitted this TPS application on September 6, 2002. The Director, NSC, denied TPS on February 28, 2003, after determining that the applicant had failed to submit sufficient evidence, as requested in a December 27, 2002 notice of intent to deny, to establish his continuous residence and his continuous physical presence in the United States.

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 parole; 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.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reflects that the applicant filed his TPS application on September 6, 2002.

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).

On December 27, 2002, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001 to the date of filing. The applicant, in response, provided the following documentation:

1. Copies of money order transfer receipts from Banco Agricola Comercial bearing the applicant's name and dated December of 1999, and January, July, and October of 2000;
2. A copy of an unsigned letter from _____ in which she stated that the applicant was a tenant at _____ Van Nuys, California, from October 1, 1999, to September of 2001;
3. An unsigned letter **from** _____ of Musicsal Productions, Inc. in which he stated that the applicant had been employed by the company from May of 2000 to June of 2001;
4. Invoices from Musicsal Productions, Inc. bearing the applicant's name and dated September 30, 2000, and March 30, 2001; and,
5. Copies of invoices from Bancomer Transfer Services, Inc. bearing the applicant's name and dated November and December of 1999, and January and February of 2000.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits additional evidence, including a notarized letter **from** _____ of Musicsal Productions, Inc. stating the applicant had been employed from May 2000 through June 2001; an affidavit from _____ of Saticoy West Apartments attesting to

the applicant's residence at [REDACTED], Van Nuys, California, from October 1, 1999, to September of 2001; and, various receipts, and invoices.

The applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.9(b) and (c).

The application, however, may not be approved at this time as the record of proceedings reveals that the applicant engaged in immigration smuggling and is inadmissible under Section 212(a)(6)(E) of the Act. That ground for inadmissibility may be waived by the director. However, the record does not reflect that the director afforded the applicant an opportunity to apply for a waiver of inadmissibility.

Pursuant to 8 C.F.R. § 244.3(b), Citizenship and Immigration Services (CIS) may waive inadmissibility under the provisions of Section 212(a) of the Act in case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds that may be waived, he or she may file for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Grounds of Inadmissibility.

Accordingly, the director's decision will be withdrawn and the matter will be remanded so that the director may accord the applicant an opportunity to pursue his options. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.