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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED]  
[LIN 03 274 50174]

Office: NEBRASKA SERVICE CENTER

Date: **OCT 31 2008**

IN RE: Applicant:

[REDACTED]

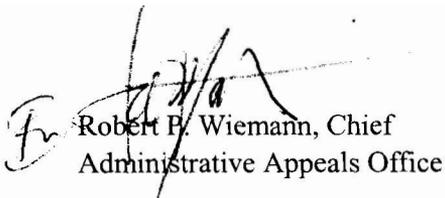
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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.

  
Robert F. 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 claims to be 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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The applicant also failed to provide evidence of his identity. The director, therefore, denied the application.

On appeal, counsel for the applicant states that additional evidence is being submitted. The applicant submits evidence in an attempt to establish his qualifying continuous residence and 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 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.

*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.

*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 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 granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed this application on September 18, 2003.

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 first issue in this proceeding is whether the applicant is eligible for late registration.

On January 27, 2004, the applicant was provided the opportunity to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his nationality and identity, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant's counsel in response, requested an additional two weeks in which to provide the requested documents. The applicant failed to submit any evidence. The director acknowledged that the applicant had an asylum application pending, but the applicant failed to establish his identity and his qualifying continuous residence and continuous physical presence in the United States. Therefore, the director denied the application.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on January 27, 2004 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to submit the requested evidence.

The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application. On appeal, the applicant submits:

1. Copies of an unidentified receipt and screen printout dated February 17, 2004; and an undated, unsigned Power of Attorney.
2. A copy of his State of Colorado Motor Vehicle Record showing citations given on March 26, 1997, April 11, 1997, September 8, 1997, March 31, 1998, August 27, 1999, February 10, 2003, and June 13, 2003; and, Department Actions taken on July 9, 1997, November 13, 1997, March 12, 1998, October 9, 1998, October 28, 1998, November 15, 1999, December 31, 1999, May 20, 2003, and September 22, 2003.
3. Statements from [REDACTED] and [REDACTED]
4. Copies of Insurance Identification Cards from Progressive Casualty Insurance Co. with an effective date of March 31, 2003, a Cancellation Notice from Progressive Insurance with a due date of April 11, 2003, and a Payment Coupon from Progressive Insurance with a due date of April 11, 2003.

The record also contains 1999 to 2005 tax returns all prepared and dated on February 7, 2007.

The unidentified screen printout reflects dates from June 5, 1999 to February 17, 2000; July 27, 2001 to September 8, 2001, September 25, 2001 to May 16, 2002, February 1, 2003 to August 4, 2003; and, November 5, 2003. Similarly, the State of Colorado Motor Vehicle Record contains dates from March 26, 1997 to December 31, 1999 and May 20, 2003 to September 22, 2003. These documents indicate the applicant was present prior to and subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States. Mr. [REDACTED] stated that he has employed the applicant since 1996. However, this statement 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)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the location where the applicant worked, his duties of employment and the exact period of employment. Mr. [REDACTED] stated that he has known the applicant for six years since 1998. This statement also has little evidentiary weight or probative value. The statement is not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided.

Mr. [REDACTED] stated in an affidavit dated March 1, 2004, that the applicant resided at [REDACTED] Colorado Springs intermittently since 2000. However, Mr. [REDACTED] does not clearly state where the applicant resided and for how long.

The documentation from Progressive Insurance is all dated subsequent to the requisite dates to establish continuous residence and continuous physical presence.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on these grounds will also be affirmed.

Beyond the director's decision it is noted that the applicant provided the final court dispositions that showed that on March 9, 1993, the applicant was convicted of "Driving While Intoxicated", a misdemeanor; and on December 12, 2002, the applicant was convicted of "Harassment – Telephone – Threat/Obscene," another misdemeanor. Consequently, the applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

It is also noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by photo identification.

8 C.F.R. § 244.9, states that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

(i) Passport;

(ii) Birth certificate accompanied by photo identification;  
and/or

(iii) Any national identity document from the alien's country  
of origin bearing photo and/or fingerprint.

The applicant has provided a copy of his birth certificate along with an English translation as evidence of his identity; however, pursuant to 8 C.F.R. § 244.2(a)(1), the applicant must also provide photo identification. The applicant has failed to provide a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied on this basis as well.

In addition, according to the record, the applicant was accorded lawful permanent resident status on May 4, 2007, based on his eligibility under the Nicaraguan Adjustment and Central American Relief Act (NACARA).

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.