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**U.S. Department of Homeland Security**

Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE*
*CIS, AAO, 20 Mass, 3/F*
*425 I Street N.W.*
*Washington, D.C. 20536*

[redacted]

File: [redacted] Office: Nebraska Service Center Date: JAN 21 2004
LIN 02 139 50318

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy M. Gomez 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 appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole on March 2, 1998. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because 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.

On appeal, the applicant asserts that he does not have rent or utility receipts to submit because he was residing with friends and relatives. The applicant 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 temporary protected status 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 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, or

(2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:

(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 term continuously physically present, as used 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 term continuously resided, as used 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 entry on or prior to February 13, 2001, 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, now the Secretary, Department of Homeland Security (Secretary), announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary with validity until March 9, 2005, 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 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 April 23, 2002, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States.

The applicant was also requested to submit a photo identity document. The applicant, in response, provided:

(a) a copy of his El Salvadoran passport;

(b) a letter from Fr. Timothy Guthridge of St. Patrick Church in Sedalia, Missouri who asserts that the applicant was a member of the church from February 2001 through February 2002;

(c) an affidavit from Mirna Leon who asserts that she has known the applicant since 1999, and attests to his residence at 226 E. Porter Street, Marshall, Missouri;

(d) an affidavit from Richard Franco who asserts that he has known the applicant since the winter of 1999 and attests to his residence at 226 E. Porter Street, Marshall, Missouri; and

(e) an earnings statement for the period ending April 25, 1999.

On appeal, the applicant submits a copy of a Notice of Intent to Deny issued by the California Service Center to someone other than the applicant. The applicant highlighted the paragraph pertaining to affidavits, and states that the Service Center "allows applicants like me to submit 'affidavits' of witness."

There is not enough information available to determine whether the fact pattern in the instant case was the same as in the case cited by the applicant. Nevertheless, it must be noted that each individual case is ultimately decided on its own merits and based on its own record of proceeding.

The letter from Fr. Guthridge has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). Most importantly, the pastor does not explain the origin of the information to which he attests.

The affidavits alone from Ms. Leon and Mr. Franco are not persuasive evidence of the applicant's continuous residence since February 13, 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these affidavits; however, no such evidence has been received.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for residence and physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.