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**U.S. Department of Homeland Security**
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Washington, DC 20536

U.S. Citizenship and Immigration Services

**PUBLIC COPY**

[redacted]

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

MAR 01 2004

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
[LIN 02 273 52023]

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: 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.

Cindy N. 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 June 20, 1999. 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 been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant reasserted his claim of eligibility.

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 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, 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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, 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).

In support of his initial application, the applicant provided the following documentation:

1. A copy of a receipt for an airline ticket issued on July 20, 1999;
2. Copies of boarding passes relating to his travel for travel from Las Vegas, Nevada, through Minneapolis, Minnesota, and to Baltimore, Maryland, on July 21, 1999;
3. Copies of a pay-stubs issued to the applicant by Midwest Sanitation Co., Inc., on August 5, 1999, and November 11, 1999;
4. A copy of a pay-stub issued to the applicant by Optimus Foods, Inc., dba Hardee's, for the pay period ending August 15, 1999; and,

5. A copy of a pay-stub issued to the applicant by Trans & Associates, Inc., on December 31, 1999.

On January 18, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

6. Copies of two pages from a contract for the month-to-month lease of an apartment in Minnesota, signed by the applicant on January 5, 2001;
7. A copy of a receipt for a money order purchased by the applicant on February 2, 2001, reflecting his address in Minnesota; and,
8. A copy of an account summary from Qwest issued to the applicant on February 7, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 10, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

9. A letter from the office manager of Twin City Pallet, Inc., who attested to the applicant's employment there from September 20, 1999, through November 24, 1999;
10. Copies of pay-stubs issued to the applicant by Twin City Pallet, Inc., for the pay periods ending November 6, 1999, and Novemeber 20, 1999;
11. A copy of a letter from a representative of Bix Produce Company, St. Paul, Minnesota, who attested to the applicant's employment there as a janitor from February 17, 2000, through July 26, 2000;
12. A copy of a pay-stub issued to the applicant by Bix Produce Company on May 24, 2000;
13. Copies of pay-stubs issued to the applicant by Masterson Personnel, Inc., on November 18, 2000, December 9, 2000, and December 23, 2000;
14. Copies of IRS Form W-2, Wage and Tax Statements, issued to the applicant by Masterson Personnel, Inc., for the 2000 and 2001 tax years, reflecting a St. Paul, Minnesota, address for the applicant;
15. Copies of pay-stubs issued to the applicant by Boca Chica, Inc., for the pay periods ending December 17, 2000, and December 31, 2000; and,
16. Copies of three corporate wage and tax printouts for 2000, 2001, 2002, and 2003.

The printouts listed in No. 16 above have no evidentiary weight or probative value as the name of the employer or the source of the information on the printout is not provided. This information is expressly required by 8 C.F.R. § 244.9(a)(2)(i).

Absent the printouts in No. 16 above, the applicant has not submitted any evidence to establish his qualifying continuous physical presence in the United States <u>since</u> March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying residence in the United States since February 13, 2001. As the appeal will be dismissed on the ground discussed above, this issue need not be examined further.

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.