



U.S. Citizenship
and Immigration
Services

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

PUBLIC COPY

MI



FILE:



Office: NEBRASKA SERVICE CENTER

Date: **AUG 31 2006**

[LIN 02 214 50446]

IN RE:

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 office that originally decided your case. Any further inquiry must be made to that office.

for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application and two subsequent late appeals treated as motions to reopen were denied by the Director, Nebraska Service Center. This is an appeal from the denial of the applicant's second motion to reopen. The case will be remanded for further consideration and action.

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 he had: 1) entered the United States prior to February 13, 2001; 2) continuously resided in the United States since February 13, 2001; and 3) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits further documentation in support of his application.

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 September 9, 2007, 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 September 5, 2002, the applicant was requested to submit a photocopy of his birth certificate or passport. He was also requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. In response, the applicant provided the following documentation:

1. A photocopy of his birth certificate and a translation.
2. An affidavit from [REDACTED] dated September 10, 2002 stating that he had known the applicant for two years and that the applicant had arrived in the United States in December 2000.
3. An affidavit from [REDACTED] dated September 10, 2002 stating he had known the applicant for two years and that the applicant had arrived in the United States in December 2000.
4. Two envelopes, one stamped September 2, 2001 and one not containing the applicant's name which was annotated April 9, 2001

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 19, 2003.

On his first motion, the applicant resubmitted his birth certificate and an affidavit from [REDACTED] dated March 7, 2003 stating the applicant lived in his house in Van Nuys, California from about December 2000 until the applicant departed to Omaha, Nebraska and that he has been in contact with him since that time.

The director determined that the applicant had still failed to submit sufficient evidence to establish his eligibility for TPS and denied the application again on May 19, 2003.

On his second motion, the applicant submitted a letter from [REDACTED] the Church of Saint Ann in Omaha, Nebraska dated May 28, 2003 [REDACTED] stated that the applicant has been a registered parishioner since February 2002.

The director reviewed the evidence submitted, noted the letter from the Reverend did not provide verifiable evidence prior to February 2002 and again denied the application on October 27, 2003.

On appeal, the applicant resubmits the affidavit from [REDACTED] dated March 7, 2003 along with the following:

1. A copy of a "MoneyGram International Money Transfer" that the applicant sent on January 15, 2001 to Emilio Rivera de Miranda in El Salvador. The money transfer lists his residence as [REDACTED]
2. An affidavit from [REDACTED] stating that he knew the applicant before he came from El Salvador in December 2000, that the applicant has been continuously residing in this country and that the writer has been in contact with him here in the United States.
3. An affidavit from [REDACTED] dated November 11, 2003 stating that he knew the applicant before he came from El Salvador on or before December 2000, that the writer has been in contact with him in this country and that he is a person of good moral character who has had no problems with the law.
4. An affidavit from [REDACTED] dated November 11, 2003 stating that he knew the applicant before he came from El Salvador around December 2000, that the writer has been in contact with him in this country and that he is a person of good moral character who has had no problems with the law.
5. An affidavit from [REDACTED] dated November 11, 2003 stating that he knew the applicant before he came from El Salvador around December 2000, that he has been in contact with him in this country and that he is a person of good moral character who has had no problems with the law.

The applicant has now submitted sufficient evidence to establish his qualifying residence or physical presence in the United States during the period from January 15, 2001 to the date the application was filed. He has, thereby, established that he has met the criteria described in 8 C.F.R. §§244.2(b) and (c). However, there is another issue in this matter.

The regulations at 8 C.F.R. § 244.9, state 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.

In this case, the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application shall be returned to the director to provide the applicant with an opportunity to provide the required documentation and fully adjudicate the application. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 further action.