

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



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

PUBLIC COPY



MI

FILE: [REDACTED]
[WAC 01 263 63095]

Office: NEBRASKA SERVICE CENTER

Date: JUL 29 2005

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.

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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement and additional evidence.

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, 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 § 244.3;
- (e) Is not ineligible under § 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.
- (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.

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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation has been granted, with the latest extension valid until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant initially submitted a letter dated July 20, 2001, from [REDACTED] Pastor of Our Lady of [REDACTED] Church in Mendota, California, stating that the applicant has been a member of his parish since August 5, 2000.

On February 4, 2004, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, provided a photocopy of his Washington driver's license issued on June 20, 2003; pay statements from The Hiawatha Corporation in Shelton, Washington, for the pay periods from November 18 to November 24, 2001; October 27 to November 2, 2002; and April 6 to April 12, 2003. The applicant also submitted photocopies of his 2001 and 2002 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statement, from the Hiawatha Corporation.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 1, 2004.

On appeal, the applicant states that he first came to the United States on August 5, 2000. The applicant explains that he first lived in Mendota, California, and then moved to Olympia, Washington in September 2001. He states that he has been "living with people I knew from El Salvador and then with my brother." The applicant further states that he wasn't able to work legally until he got his first Employment Authorization Card in 2001. He submits the following:

1. a photocopy of his Washington driver's license issued on September 28, 2001;
2. a letter dated March 24, 2004, from [REDACTED] stating that she has known the applicant "since August 5, 2000;"
3. a letter dated October 29, 2002, from [REDACTED] bookkeeper at [REDACTED] Farms, informing the applicant that, according to the Social Security Administration, his name and social security number do not match;
4. a photocopy of an automobile insurance policy from QBE Insurance Corporation headquartered in San Diego, California, valid for the period from December 2, 2002 to June 2, 2003, the applicant's insurance card, and a letter from QBE dated March 28, 2003;
5. photocopies of pay statements from The Hiawatha Corporation for the pay periods from: October 13 to October 19, 2002; November 24 to November 30, 2002; December 8 to December 14, 2002; March 23 to March 29, 2003, along with a photocopy of a pay statement from Cover-All, Inc., for the pay period from February 11, 2002 to February 17, 2002;
6. photocopies of ADP pay statements from [REDACTED] Services, LLC, dated August 23, 2002 and September 6, 2002;

7. photocopies of [REDACTED] pay statements from Washington Insulation, Inc., dated October 17, 2003; October 24, 2003; October 31, 2003; November 7, 2003; and January 9, 2004; and,
8. a letter from Sprint PCS dated July 2, 2003, and a photocopy of a Sprint PCS bill for the service period from April 3 to May 4, 2003.

The applicant has submitted only the letters from [REDACTED] and [REDACTED] (No. 2 above) to establish his qualifying continuous residence and continuous physical presence in the United States prior to August 3, 2001, the filing date of the application. The affidavit from [REDACTED] 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)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. Further [REDACTED] stated in her affidavit that she met the applicant on August 5, 2000, the date he purportedly arrived in the United States. However, she did not provide any information regarding the basis for her acquaintance with him or his address at that time.

Additionally, there are discrepancies in the ADP pay statements the applicant submitted on appeal. He indicates on his TPS application that he is single. The ADP pay statements from Oki Services, LLC, indicate that he is married and claiming five exemptions for federal income tax purposes. The ADP pay statements from Washington Insulation, Inc., indicate that he is single and claiming three exemptions for federal income tax purposes. The applicant has not provided any explanation for these discrepancies.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods, and has, therefore, failed to satisfy the residence and physical presence requirements 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.

It is noted that the record reveals that the applicant was arrested in Tacoma, Washington, on November 9, 2003, and charged with assault. This charge must be addressed in any future proceeding before CIS.

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.



Page 6

ORDER: The appeal is dismissed.