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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[LIN 02 243 50037]

Office: NEBRASKA SERVICE CENTER

Date: MAR 02 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
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 determined that the applicant failed to establish he: 1) had continuously resided in the United States since February 13, 2001; and 2) had been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant states that he misunderstood what additional information was requested. The applicant provides additional documentation in an attempt to establish his continuous residence and continuous physical presence during the qualifying period.

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.

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.

The term *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, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity 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 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 record shows that the applicant filed his initial application on April 2, 2001. The director denied that application on August 13, 2003, after determining that the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States from March 9, 2001 to the filing of his application.

The applicant filed this TPS application on July 18, 2002. On September 9, 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 evidence of his nationality and

identity. In response, the applicant submitted a photo identity document and a copy of the English translation of his birth certificate, but not the original. The applicant did not present sufficient evidence of his residence in the United States since February 13, 2001. Therefore, the director denied the application.

On appeal, the applicant claims that he did not understand what information he was requested to submit, but that he now knows. The applicant provides additional evidence, including the following:

1. Photocopies of his Social Security card, Employment Authorization Card, and a State of Iowa Driver License, issued on April 22, 2002.
2. Photocopies of his "Cedula" identification document from El Salvador, issued on March 23, 2001 and his birth certificate, with English translation.
3. A letter from ██████████ President of State of the Art, Inc., who says that his company employed the applicant from September 22, 1999 to July 31, 2001.
4. Photocopies of his 1999, 2000, 2001 and 2002 Form W-2, IRS Wage and Tax Statements.
5. Photocopies of a phone bill, dated January 9, 2001; a doctor's bill dated August 30, 2002, showing treatment on dates in July and August 2002; and another doctor's bill dated September 3, 2002.

The "Cedula" and birth certificate establish the applicant's nationality. The letter from Mr. ██████████ shows that the applicant was employed from 1999 to 2001. The 1999 and 2000 tax documents indicate Mr. ██████████ company employed the applicant. The 2001 and 2002 tax documents indicate the applicant was employed by ██████████ and only earned \$3055 and \$630 respectively, which is substantially lower than the wages earned in the previous two years. Consequently, this does not establish continuous residence and continuous physical presence during the qualifying period. The phone bill indicates a billing period ending January 8, 2001. The doctor bills indicate treatment in July 2002 and August 2002.

The "Cedula" which is signed by the applicant and has his fingerprint affixed to it, was issued in El Salvador on March 23, 2001, and indicates his residence at ██████████. The applicant has furnished no explanation of his apparent absence from the United States, or the dates or length of the absence, which might explain the reduced wages for 2001 and 2002. 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 application. It is incumbent upon 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant failed to establish his continuous residence and continuous physical presence in the United States during the qualifying period. 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.