

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

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI

FILE:

Office: Nebraska Service Center

Date: MAR 31 2005

IN RE:

Applicant:

APPLICATION:

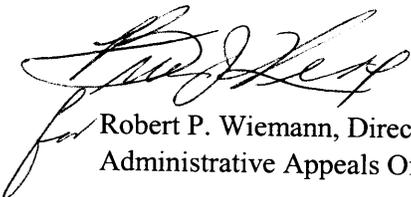
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, 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 he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods or his date of entry into the United States.

On appeal, the applicant asserted his claim of eligibility for TPS and submitted additional evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 9, 2003.

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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On August 25, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In addition, the applicant was requested to submit a photo identity document.

The applicant, in response, provided documentation relating to his residence and physical presence in the United States, and evidence of his identity and nationality.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on October 23, 2003. The director also 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 states that he is submitting all the evidence from February 2001 to July 2003 with his appeal.

The applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. However, this evidence does not mitigate the applicant's failure to file his Application for Temporary Protected Status within the initial registration period. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, or his physical presence in the United States since March 9, 2001.

As stated above, on August 25, 2003, the applicant was also requested in the director's intent to deny his application, to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided the following documentation in an attempt to establish his continuous residence and physical presence in the United States:

1. Original bill statement from Progressive dated May 12, 2000.

2. A copy of his [REDACTED] or his home for the year 2002.
3. Copies of his [REDACTED] from Qwest dated November 25, 2001 and March 5, 2002.
4. A copy of a State of Minnesota Certificate of [REDACTED] card bearing an effective date of April 2, 1999.
5. A copy of his vehicle's title bearing an issue date of May 16, 2000.
6. A copy of his lease agreement between the applicant and [REDACTED] dated November 16, 1998 for the rental period of December 1, 1998 to May 31, 1999.
7. A copy of a title dated March 13, 1999 for a vehicle owned by [REDACTED]
8. Original Insurance Identification Cards issued to the applicant for the period June 8, 2003 to December 8, 2003.
9. Copies of his [REDACTED] bearing an expiration date of February 20, 2006.
10. A copy of a State of [REDACTED] Certificate of Liability Insurance card bearing an expiration date of May 1, 1999.
11. An original of his [REDACTED] plate registration card bearing a payment stamp dated April 21, 2001.
12. A copy of [REDACTED] from [REDACTED] Temporary Staffing bearing a check date of January 2, 1998.

The director, however, determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on October 23, 2003.

On appeal, the applicant submitted the following additional documentation:

13. Copies of hand-written receipts dated May 26, 2001 and May 20, 2002.
14. Original monthly bank statements from the [REDACTED] of Northfield dated from April 1, 2001 to June 30, 2002.
15. Copies of a receipt from the [REDACTED] and Vehicle Services showing payment dates of July 2, 2001 and February 27, 2002.
16. Copies of envelopes addressed to the applicant bearing postmark dates of January 9, 2001, July 18, 2001, September 26, 2001, October 4, 2001, January 3, 2002, and May 14, 2003.
17. A copy of a notice from the [REDACTED] Assessor's Office dated July 11, 2001 regarding the applicant's purchase of property.
18. Copies of billing summaries from [REDACTED] dated May 3, 2001, July 3, 2001, August 2, 2001, and August 30, 2001.
19. Copies of letters from the [REDACTED] of Northfield dated September 25, 2001 and July 18, 2001, and a letter from [REDACTED] group dated January 13, 2003.
20. A copy of a Certificate [REDACTED] from Farmers Insurance Group indicating an effective date of October 31, 2002 for his auto insurance.
21. Copies of homeowner's policy declaration for the policy period from June 29, 2003 to June 29, 2004.
22. Copies of his insurance identification cards from June 29, 2002 to June 29, 2004.

23. Copies of his account summaries from Protection One dated from January 2, 2002 to August 3, 2003.
24. A copy of an Earnings Statement bearing a pay date of March 22, 2003.
25. A copy of his [REDACTED] Form W-2, Wage and Tax Statement, reflecting income for the year 2001.
26. Copies of his property tax bill for the years 2002 and 2003 for his trailer home in [REDACTED] County, [REDACTED].

The applicant has submitted evidence in an attempt to support his claim of eligibility for TPS. The copies of the documents in No. 4, 6, 7, 10, and 12 above, pre-date the eligibility for TPS by approximately two years.

The copy of the envelope postmarked on January 9, 2001, as detailed in No. 16, may suggest that the applicant was in the United States prior to February 13, 2001, but it does not establish continuous residence since February 13, 2001. Further, the tax document detailed in No. 25 above, indicates that the applicant was in the United States during the year 2001. However, this document does not provide the actual dates of employment. The burden is on the applicant to establish his continuous residence since February 13, 2001. The applicant claimed to have lived in the United States since May 10, 1997. It would be reasonable to expect that he would have evidence in support of his continuous residence and continuous physical presence in the United States prior to February 13, 2001, and since March 9, 2001.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

An alien applying for TPS 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.