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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: NOV 06 2006
[LIN 01 169 50435]

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:

[redacted]

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 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 had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel for the applicant asserts that the denial of the application was unfounded and unjustified. The applicant also resubmits evidence previously provided in an attempt to establish 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.

Persons applying for TPS offered to El Salvadorans must demonstrate 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. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite 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 TPS application on April 17, 2001. On November 20, 2001, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit a copy of his birth certificate or passport and a photo identity document. The applicant, in response, provided a photocopy of his passport, a Form I-200, Warrant for Arrest of Alien dated July 26, 1999, a Form I-862, Notice to Appear dated July 26, 1999, a Notice of Hearing in Removal Proceedings dated August 12, 1999, and a copy of the Order of the Immigration Judge dated August 3, 2001. The record also contains a statement from

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, counsel for the applicant states that the denial of the decision was unfounded and unjustified. Counsel states that the applicant has submitted more than sufficient evidence to establish he entered the United States before February 13, 2001 and has been continuously in the United States since March 9, 2001. According to counsel, CIS records establish that the applicant entered the United States before February 13, 2001 and has continuously resided here since his entry. Contrary to counsel's contention, the evidence submitted does not establish his qualifying continuous residence and continuous physical presence in the United States. The warrant of arrest does indicate the applicant entered the United States on or about July 20, 1999. The remaining CIS

documents indicate the applicant was present on those dates. Counsel stresses that because the applicant posted bond and CIS never made an effort to forfeit the bond the applicant maintained continuous residence and continuous physical presence in the United States during the qualifying period. However, the bond was posted for the applicant's release on the condition that the applicant be produced or produce himself upon each and every written request. Consequently, there was no process for insuring or requiring that the applicant meet the continuous residence and continuous physical presence in the United States during the qualifying period. As a result, the CIS-based evidence indicates the applicant entered the United States prior to February 13, 2001, but the applicant has provided no evidence of the applicant's presence in the United States from July 1999 until February 13, 2001. Ms. [redacted] states that she has known the applicant since October 1999. However, this statement is not supported by any corroborative evidence. The applicant claims to have lived in the United States since July 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support the submitted evidence; however, no such evidence has been provided.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence 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.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.