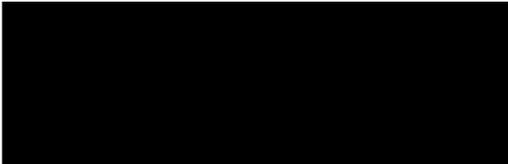


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

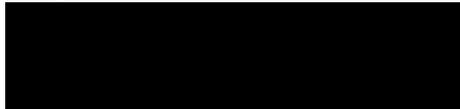
Date: **OCT 17 2006**

[consolidated herein]

[LIN 01 153 52303]

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.

Cindy M. Homen for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. A motion to reopen, filed by the applicant, was granted by the director and he again denied the application. The applicant appealed the director's decision on the motion. This matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 initially denied the application because the application failed to appear for fingerprinting.

On motion, the applicant stated that he did appear to be fingerprinted.

The director reopened the application and subsequently 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, the applicant requests that the decision be reconsidered. The applicant also submits additional evidence in an attempt to establish his continuous residence and continuous physical presence in the United States 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 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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 8, 2001, the director denied the application because the director determined the applicant failed to appear for fingerprinting. The applicant submitted a subsequent motion to reopen that was granted by the director.

On June 11, 2003, the applicant was provided the opportunity to submit evidence establishing his date of entry and continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant failed to respond to the notice. The director therefore denied the application.¹

¹ There appear to be two denials of the same TPS application contained in the record, and issued for the same reason, dated August 13, 2003, and March 3, 2004.

On appeal, the applicant requests that the director reconsider the decision. According to the applicant, he is now aware that he has not submitted sufficient evidence to support his case. The applicant submitted, and the record contains the following documentation:

1. Copies of tax documentation for 2001, 2002, and 2003.
2. A letter from Social security Administration dated July 20, 2001.
3. Copies of receipts from Jasper Municipal Utilities dated September 19, 2002, from Wallace Law Office dated November 27, 2001, Rent-A-Center dated October 14, 2002, October 22, 2002, November 4, 2002, November 23, 2002, November 29, 2002, December 10, 2002, December 14, 2002, December 23, 2002, December 30, 2002, January 4, 2003, January 11, 2003, January 20, 2003, February 1, 2003, February 8, 2003, February 22, 2003, March 15, 2003, March 17, 2003, March 22, 2003, April 1, 2003, April 28, 2003, May 17, 2003, May 27, 2003, June 2, 2003, June 14, 2003, June 21, 2003, June 30, 2003, July 3, 2003, July 14, 2003, July 19, 2003, July 26, 2003, August 2, 2003, August 9, 2003, August 16, 2003, August 25, 2003, September 3, 2002, September 8, 2003, September 20, 2003, September 29, 2003, October 10, 2003, October 15, 2003, October 25, 2003, November 1, 2003, November 15, 2003, December 13, 2003, January 24, 2004, February 21, 2004, as well as several receipts with unreadable dates and a copy of a contract with Rent-A-Center.
4. Photocopies of pay stubs from Kimball International, Jasper, Indiana, dated: October 10, 2003; October 14, 2003, October 17, 2003; October 24, 2003; October 31, 2003; November 7, 2003, November 14, 2003, and, November 21, 2003, November 26, 2003, November 29, 2003, December 5, 2003, December 12, 2003, December 19, 2003, December 26, 2003, January 2, 2004, and March 5, 2004.
5. Copies of receipts from MasterBrand, Jasper, Indiana, dated August 22, 2002, August 29, 2002, September 12, 2002, September 19, 2002, September 26, 2002, October 3, 2002, October 10, 2002, October 17, 2002, October 24, 2002, November 21, 2002, November 27, 2002, December, 5, 2002, December 11, 2002, December 12, 2002, December 19, 2002, December 26, 2002, January 2, 2003, January 9, 2003, January 16, 2003, January 23, 2003, January 30, 2003, February 6, 2003, February 13, 2003, February 20, 2003, February 27, 2003, March 6, 2003, March 13, 2003, March 20, 2003, March 27, 2003, April 3, 2003, April 10, 2003, April 17, 2003, April 24, 2003, May 1, 2003, May 8, 2003, May 15, 2003, May 22, 2003, May 29, 2003, June 5, 2003, June 12, 2003, June 18, 2003, June 19, 2006, June 26, 2003, July 3, 2003, July 10, 2003, July 17, 2003, July 24, 2003, and September 5, 2002.
6. Copies of hand-written generic receipts dated September 8, 2002, October 11, 2002, November 11, 2002, December 16, 2002, January 27, 2003, February 21, 2003, March 21, 2003, April 18, 2003, June 2, 2003, July 7, 2003, August 5, 2003, and August 19, 2003.

7. Copy of a receipt from Industrial Medicine, Jasper, Indiana dated August 20, 2003, and an Application for Utility Services dated September 23, 2002.
8. Copies of bi-weekly pay stubs dated from December 23, 2001 to October 27, 2002 from an unidentified employer.
9. A copy of an Indiana State-issued driver's license issued to the applicant on December 14, 2000
10. Copies of a Social Security Statement dated September 3, 2003, an Indiana Application for Vehicle Registration Renewal dated August 15, 2003, and postal receipts dated March 30, 2001, June 29, 2002, July 2, 2002 September 2, 2003.
11. A passport issued to the applicant in El Salvador on January 4, 2000.

The pay stubs in Numbers 8, 9, and 11, further supported by the additional evidence serve to establish that the applicant entered the United States and had maintained continuous residence since February 13, 2001 and continuous physical presence in the United States from March 9, 2001, to the filing date of the TPS application. The applicant claims to have entered the United States in July 2000. Evidence submitted indicates that the applicant had entered the United States no later than July 2000.

Therefore, the director's decision will be withdrawn and the application will be approved.

It is noted that a warrant of removal was issued on September 29, 1993, at Chicago, Illinois, but that the Immigration Judge later rescinded his order and granted the applicant voluntary departure until June 30, 1994. The applicant had a Form I-130 approved in his behalf and his spouse, on November 17, 1994, asserted that the applicant had departed the United States to await issuance of the immigrant visa prior to that date. No other evidence of this assertion is contained in the record until the issuance of the passport in El Salvador to the applicant on January 4, 2000.

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. Here, the applicant has met this burden.

ORDER: The appeal is sustained.