



U.S. Citizenship
and Immigration
Services

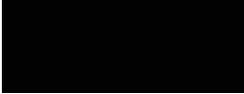
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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUL 10 2008

[LIN 02 296 50104]

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:

INSTRUCTIONS:



This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the California Service Center. Any further inquiry must be made to that office.

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 (AAO) 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.

On appeal, counsel for the applicant asserts that the denial of the TPS application may have been a clerical error because other notices indicate the application was granted. According to counsel, this application was for renewal only.

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 applicant filed his initial TPS application on April 23, 2001. That application was denied by the director on January 23, 2003. The applicant filed an appeal on February 24, 2003. That appeal will be addressed in a separate decision. The record shows that the applicant filed this TPS application on September 9, 2002. The director approved the application on January 16, 2003. On June 26, 2003, the applicant was informed that the director intended to revoke the approval of the application because the applicant did not provide sufficient evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. In addition, the director determined that the applicant's initial application had been denied. In response, the applicant submitted:

1. Copies of hand-written receipts dated January 1, 2001, February 1, 2001, March 1, 2001 April 1, 2001 and May 1, 2001.
2. Copies of his El Salvadoran Passport.
3. Copies of evidence already part of the record.

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 reasserts the applicant's claim and resubmits the documentation listed above. The applicant also submits a copy of a letter from [REDACTED], the individual who signed the rent receipts. According to Ms. [REDACTED], she has known the applicant since November 2000 and the applicant has lived with her since that time.

The record also contains CIS documents, which establish that the applicant was released from CIS custody on November 24, 2000.

The passport and birth certificate establish the applicant's nationality. The CIS document establishes that the applicant was present in the United States prior to the requisite dates to establish continuous residence and continuous physical presence. The letter from Ms. [REDACTED] and the hand-written receipts indicate the applicant maintained 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. Consequently, all of these documents help to establish that the applicant had maintained continuous physical presence in the United States since March 9, 2001.

The applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c).

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

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.