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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

[Redacted]

Office: Nebraska Service Center

Date: FEB - 4 2003

IN RE: Applicant:

[Redacted]

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

IN BEHALF OF PETITIONER: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole in February 2000. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254, because 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.

On appeal, the applicant asserts that he has submitted sufficient evidence to establish his eligibility for TPS.

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 is eligible for temporary protected status only if such alien establishes that he or she:

- (a) is a national of a 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

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 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, continuous residence in the United States since February 13, 2001, and continuous physical presence 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.

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 the Service. 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).

In support of his application, the applicant provided a copy of a receipt from Greyhound Lines, Inc., relating to the travel on September 22, 2000 of "GOMEZ MS/MR." The applicant also submitted copies of two letters written by representatives of La Guia Hispana on behalf of Atanacio Lopez, an alias the applicant claimed to have used. In addition, the applicant provided a photocopy of a photo-identification card for the "TORNEO DE FUTBOL VOCES HISPANAS DE OTTUMWA" from 2001 and 2002.

On February 20, 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 a photo identity document. The applicant, in response, provided a photocopy of a receipt from Wal-Mart dated May 1, 2001. This document does not provide any information relating to the applicant.

The applicant provided a photocopy of a California Identification Card for Darwin Ivan Santos. However, the credibility of this document is questionable since the document appears to have been altered. In addition, the document indicates that it was issued on October 7, 1997, while the applicant indicated on his application that he entered the United States in February 2000.

The applicant also submitted a photocopy of a receipt for auto repairs dated November 8, 2000. However, it appears that this document has also been altered since the hand-written name on the receipt does not match the rest of the text that was hand-written on the document.

The director determined that the applicant had failed to establish his eligibility for Temporary Resident Status and denied the application on May 31, 2002. On motion to reopen, the applicant submitted a letter from Olivia Reyes. Ms. Reyes stated that she had known the applicant since he entered the United States in February 2000, and that they both moved to Ottumwa, Iowa, in July 2001. It is noted that Ms. Reyes' testimony contradicts evidence previously submitted by the applicant. While Ms. Reyes stated that the applicant moved to Iowa in July 2001, the applicant had previously submitted a photocopy of a receipt that purports to show that the applicant was living in Iowa on November 8, 2000. This discrepancy further discredits the credibility of the evidence provided by the applicant.

The director determined that the applicant had failed to overcome the grounds for denial and on August 19, 2002, he affirmed his previous decision.

On appeal, the applicant reasserted his claim of eligibility and submitted carbon copies of three checks purportedly written to him by Rolan M. Quille, of Orlando, Florida, in February, March, and July of 2000. The applicant stated that these were paychecks; however, he did not explain how he was working for a man in Florida during a time when he was allegedly living in Iowa.

As detailed above, the documentation provided by the applicant contains numerous alterations and inconsistencies. It is incumbent upon the petitioner 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. See Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

Since the applicant has failed to provide any explanations for the

inconsistencies in his documentation, these documents cannot be deemed credible. The applicant has not submitted any credible evidence 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 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.