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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[REDACTED]

FILE: [REDACTED] OFFICE: Nebraska Service Center

DATE: NOV 25 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

ON BEHALF OF APPLICANT: [REDACTED]

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 Citizenship and Immigration Services (CIS) 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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center. The applicant filed an untimely appeal which the director treated as a motion to reopen. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion will be granted, and the previous decision of the AAO will be affirmed.

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 after determining that the applicant had failed to provide conclusive evidence that he had met the requirements of the registration period for continuous residence in the United States since February 13, 2001, and physical presence in the United States since March 9, 2001.

The AAO dismissed the appeal because the applicant failed to establish he had continuously resided in the United State since February 13, 2001 and been continuously physically present in the United States since March 9, 2001.

On motion, counsel asserts that the AAO did not review all of the evidence submitted by the applicant. Counsel maintains that the AAO failed to link any of the evidence together or view the evidence as a whole. In addition, counsel contends that an applicant is not required to submit corroborating evidence if an affiant has made a declaration under the penalty of perjury.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f) (2) of this section.

Continuously physically present 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.

Continuously resided 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. A subsequent extension of the TPS designation has been granted by the Secretary of Homeland Security, with validity until March 9, 2005, 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 the director. 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 October 16, 2001, the applicant was provided the opportunity to submit evidence to establish his residence in the United States since February 13, 2001 and physical presence in the United States since March 9, 2001. The applicant, in response, submitted copies of envelopes addressed to him in Emporia, Kansas, as well as affidavits from [REDACTED]. The director determined that the applicant had failed to provide clear and conclusive evidence that he had met the continuous residence and continuous physical presence requirements for TPS and denied the application on February 12, 2002.

On March 21, 2002, the applicant filed a Form I-290B, Notice of Appeal to the Commissioner. The Form I-290B was filed untimely, therefore, the director treated the filing as a motion to reopen.

The applicant asserted on the Form I-290B that he had sufficient evidence to establish his residence in the United States since February 13, 2001. The applicant submitted the following evidence:

- (1) duplicate copies of two envelopes postmarked in El Salvador in January and August 2001, which were addressed to the applicant in the United States;
- (2) an identification card, issued in Kansas, on October 23, 2001;
- (3) a statement from Fr. Daniel L. Gardner, Pastor, St. Catharine of Alexandria Catholic Church, who stated the applicant has been a resident of Emporia and a member of the parish of St. Catherine's since December 2000;
- (4) an affidavit from [REDACTED] ESL Program Director, Flint Hills Learning Center, which stated the applicant attended classes on a regular basis starting on September 1, 2001;

- (5) an affidavit from [REDACTED] the applicant's brother, who stated the applicant has resided in his home since December 2000;
- (6) a 2001 W-2 Wage and Tax Statement and Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, for the year 2001;
- (7) pay stubs from IBP for the period November 17, 2001 to December 22, 2001, which bear the applicant's Social Security number but not his name; and
- (8) an employment verification letter from [REDACTED] personnel clerk, IBP, indicating that the applicant has been employed there since November 13, 2001.

On June 28, 2002 the director found that the evidence submitted with the Form I-290B did not overcome the grounds of denial and affirmed the previous decision of the director.

On October 15, 2002, the AAO determined that the applicant had not submitted sufficient evidence to establish that he had met the physical presence and continuous residence criteria for TPS and dismissed the appeal.

On the instant motion, counsel asserts that the AAO did not review all of the evidence submitted by the applicant. Counsel maintains that the AAO failed to link any of the evidence together or to view the evidence as a whole. In addition, counsel contends that an applicant is not required to submit corroborating evidence if an affiant has made a declaration under the penalty of perjury.

A review of the October 15, 2002 decision of the AAO reflects that the director did acknowledge all of the evidence submitted by the applicant, however, the decision did not specifically address the two envelopes postmarked January and August 2001. The envelopes addressed to the applicant in the United States may indicate that the applicant was present in the United States on those dates, however, they do not establish that he maintained continuous residence and physical presence in the United States since February 13, 2001.

Pursuant to 8 C.F.R. § 244.9(v), an applicant may submit attestations by churches, unions, or other organizations of the applicant's residence by letter which:

- (A) Identifies applicant by name;
- (B) Is signed by an official whose title is also shown;

- (C) Shows inclusive dates of membership;
- (D) States the address where applicant resided during the membership period;
- (E) Includes the seal of the organization impressed on the letter or is on the letterhead of the organization, if the organization has letterhead stationery;
- (F) Establishes how the attestor knows the applicant; and
- (G) Establishes the origin of the information being attested to.

The letter from [REDACTED] states that the applicant has been a resident of Emporia and a member of his parish since December 2000, however, Father [REDACTED] does not provide a complete address for the applicant. While counsel asserts that deference should be given to the letter from Father [REDACTED] there is no provision in the regulations for giving additional weight to an affidavit which does not meet the above criteria. Moreover, a single affidavit of knowledge is insufficient unless accompanied by additional supporting evidence, which the applicant in this case has not provided.

The applicant has not submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the AAO 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 previous decision of the AAO is affirmed.