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**U.S. Citizenship
and Immigration
Services**



FILE: 

Office: Nebraska Service Center

Date: **APR 15 2004**

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.

Robert P. Wiemann, Director
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 denied the application because the applicant failed to establish he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserted his claim of eligibility for TPS and submitted evidence in support of his claim.

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 phrase continuously physically present, as defined 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 phrase continuously resided, as defined 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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department 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 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).

In support of his initial application for TPS, the applicant provided the following:

1. Copies of pages from his El Salvadoran passport.
2. Copies of his student identification card, a Mexico Express card, and an El Salvadoran voter's registration card.
3. Copies of receipts from Gigante Express dated November 12 and 13, 2001.
4. Copies of pay-stubs for pay periods ending August 11, 2001 through September 11, 2001.

5. A copy of a receipt from Starlight Limos dated January 30, 2001, with a receipt date of January 10, 2001.

On September 5, 2002 and December 5, 2002, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

6. A copy of a hand-written rent receipt dated February 28, 2001.
7. A copy of a check duplicate dated February 20, 2001.

Further, on April 18, 2003, the applicant was notified of the Service's intent to deny his application, and he was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. However, the applicant failed to respond to the Service's intent to deny his application. The director, thus, denied the application on June 17, 2003, because the applicant had failed to submit sufficient evidence to establish his eligibility for TPS.

On appeal, the applicant reasserted his claim and resubmitted copies of previously submitted documents, along with the following documentation:

8. An affidavit from a friend, [REDACTED] who testified that the applicant had lived with her in San Bernardino, California, from January 2001 to September 2001.

The photocopied receipt detailed in No. 6 above appears to have been altered as the original date on the receipt seems to have been March 3, 2002. Also, the check duplicate in No. 7 indicates that the check was paid directly to the applicant. Further, the address indicated on receipt No. 5 does not match the address attested to in the affidavit from Ms. [REDACTED] in No. 8 above.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant 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. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the document in No. 6 above. The applicant has also failed to explain the discrepancies regarding the documents in Nos. 5, 7, and 8 above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy the residence and physical presence requirements described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, the applicant also has provided insufficient evidence to establish continuous residence in the United States as required under 8 C.F.R. § 244.2(c). As the appeal will be dismissed on the grounds discussed above, these issues need not be examined further.



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.