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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



MU

FILE:



Office: CALIFORNIA SERVICE CENTER

Date: AUG 02 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, California 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: 1) his continuous residence in the United States since February 13, 2001; 2) his continuous physical presence in the United States since March 9, 2001; 3) his Salvadoran nationality; and, 4) his identity.

On appeal, the applicant submits a statement and additional evidence.

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.

- (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 conditions described in paragraph (f)(2) of this section.

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 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).

The first issue in this proceeding is whether the applicant has provided sufficient proof of identity and nationality.

Pursuant to 8 C.F.R. § 244.9(a)(1), each application for TPS must be accompanied by evidence of the applicant's identity and nationality. Acceptable evidence includes a passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint.

In this case, the applicant has provided a photocopy of a Salvadoran birth certificate showing that [REDACTED] was born to [REDACTED] on October 20, 1972. The applicant has also provided a photocopy of [REDACTED] issued to [REDACTED] on May 9, 1999. This document, which bears the applicant's photograph and fingerprints, indicates that [REDACTED] was born to [REDACTED] at [REDACTED] on October 20, 1972. It is concluded that the applicant has provided sufficient evidence of nationality and identity. Therefore, this ground for denial of the application has been overcome.

The second issue in this proceeding is whether the applicant has provided sufficient evidence to establish continuous residence and physical presence in the United States during the requisite periods.

On February 22, 2003, the applicant was requested to submit evidence establishing his identity and nationality, his continuous residence in the United States since February 13, 2001, and his physical presence in the United States residence since March 9, 2001. The applicant, in response, provided a rental record for apartment #203 at an unidentified address. According to this document, [REDACTED] moved into apartment #203 on July 1, 2000, and resided at that address through March 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 14, 2003. On appeal, the applicant states that he needs legal status in order to work in this country. He did not submit any evidence in support of the appeal. The rental record submitted in response to the Notice of Intent to Deny is not sufficient to establish the applicant's qualifying continuous residence and physical presence in the United States during the requisite periods. The location of the apartment building is not indicated on the form, and the applicant has not provided any evidence to establish that he is the [REDACTED] residing in that apartment since July 1, 2000. The applicant claims to have lived in the United States since March 1995. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to establish continuous residence and physical presence in the United States during the requisite periods; however, no such evidence has been provided. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements 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.