



U.S. Citizenship
and Immigration
Services

MMI

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: 4/13/2004

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: 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.


for 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 (AAO) 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 was eligible for late registration. The director also found that the applicant had failed to establish his date of entry into the United States on or prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant provides additional documentation.

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 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 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. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 13, 2002.

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 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 is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

In a notice of intent to deny, dated April 3, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant failed to respond to the notice of intent to deny.

The director determined that the applicant failed to establish he was eligible for late registration and denied the application on August 25, 2003.

On appeal, the applicant states that he is “again” submitting “new evidence that was sent to INS but never received.” Nevertheless, the applicant failed to provide any evidence to establish eligibility for late registration. The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

Additional issues in this proceeding are whether the applicant has established his entry into the United States on or prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

As previously stated, the applicant failed to respond to the Service's notice of intent to deny, dated April 3, 2003, and consequently, the director determined that the applicant had failed to establish entry into the United States prior to February 13, 2001, and failed to provide sufficient evidence to establish his continuous residence and his continuous physical presence in the United States during the required timeframes.

On appeal, the applicant submitted earning statements from wholesale Produce Supply Company for pay periods ending August 18, 2001, September 1, 2001, November 3, 2001, and December 8, 2001, each covering a 40-hour workweek. The applicant also submitted what appears to be an earning statement from McDonald's for the pay period of April 7, 2001, and three income statements from J. Mont, Inc. dba Downtowner Car Wash, dated 3/20/01, 6/26/01, and 7/10/01. It is noted that the applicant's name is not on any of the three income statements. The applicant further submitted a copy of his Internal Revenue Service Form W-4, Employee's Withholding Allowance Certificate, for 2001 showing the employer as Downtowner Car Wash. In addition, the applicant submitted what appears to be a statement from Downtowner Car Wash for the number of hours worked by the applicant during March 14, 2001 through March 20, 2001. It is noted that this statement and the W-4 contain

different social security numbers for the applicant. Further, the W-4 appears to have been altered, as there has been a change in the date.

The AAO not only finds these documents insufficient, as they only cover several weeks of the qualifying timeframe, but questionable, as these same types of documents (same format, wording, and lettering) have been submitted with numerous other TPS applications. Further, the different social security numbers and date alteration have not been explained. 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 not submitted sufficient credible evidence to establish his entry into the United States on or prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed 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 TPS on these grounds will also 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.