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U.S. Citizenship  
and Immigration  
Services



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: 7/16/10

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Administrative Appeals Office  
Final Decision  
Appeals of Administrative Decisions

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**DISCUSSION:** The application was denied by the Director, Nebraska Service Center, on May 30, 2002. The applicant appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on February 27, 2003. The case is now before the AAO on a Motion to Reopen. The Motion will be granted; 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, Nebraska Service Center, denied the application because the applicant failed to establish his date of entry into the United States and that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

The Director, AAO, dismissed the appeal, affirming the director's findings that the applicant had not established his date of entry into the United States and his continuous residence and continuous physical presence in the United States. The Director, AAO, specifically noted that the applicant had provided various materials relating to his residence and physical presence in the United States for years prior to February 2001, but did not submit evidence for the required periods of time since February 2001.

It is noted that the service center director's request for additional evidence specified that the applicant should present evidence regarding "Date of Entry since February 13, 2001." The AAO decision states in part:

The [service center] director informed the applicant that the registration period is defined as follows: date of entry since February 13, 2001...

Pursuant to 8 C.F.R. § 244.2(b) and (c), an applicant must establish that he or she has been continuously physically present and has continuously resided in the United States since the most recent designation of that foreign state. In order to meet these requirements, an applicant would necessarily have had to enter the United States on or before the designated date in order to establish residence. Requesting proof of entry "since" the required date of residence is factually incorrect and the statement is, therefore, withdrawn. The concomitant finding that the applicant had not established his date of entry is also withdrawn as the evidence of record, including CIS records, establishes that the applicant entered the United States prior to the designated dates.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

On motion, the applicant reasserts that he has resided in the United States since March 1984, and presents new evidence relating to 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 except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for Temporary Protected Status 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.

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).

On motion the applicant presented the following evidence:

1. A statement by the applicant;
2. A photocopy of a statement from Coresource, Matteson, Illinois, for Disability Benefits, indicating that 4 weeks and 4 days of disability benefits have been paid to the applicant as of December 11, 2000;
3. A letter dated January 28, 2002, on letterhead of Loyola University Chicago, Maywood, Illinois, indicating that the applicant "underwent aortic root replacement with homograft one-year prior," and was hospitalized for aortic valve replacement surgery on January 9, 2002;
4. A photocopy of a March 2003 co-pay receipt for "Family Medical Care Group," of an unspecified address;
5. A Form I-797C, Receipt Notice, dated October 24, 2002, for the applicant's Notice of Appeal filed on June 28, 2002; and
6. Resubmitted Internal Revenue Service (IRS) documents for 1999, 1995, pay stubs and receipts for 1996, 1997, 1998, and a photocopy of his Employment Authorization Card indicating he has a pending TPS claim.

It is noted that the letter from Loyola University Chicago contains only the first page of the document and bears no signature page of the physician who prepared the document. The co-pay receipt of March 2003, does not contain any verifiable information concerning the facility at which treatment was received. The applicant had previously submitted a photocopy of a partial page of a document entitled "Long Term Disability Explanation of Benefits," GE Group Life Assurance Company, Enfield, Connecticut, listing the applicant as the insured party and the disability date as November 2, 2000. The group and control numbers on this document differ from those on the Coresource document listed at Number 2 above; the relationship between these sources is unclear. Given the nature of the applicant's stated hospitalizations, medical treatment, and disability insurance, a reasonable factfinder would expect to see disability payment receipts, hospital and/or medical bills and receipts, and other

follow-up documentation that would reflect treatment throughout the period of illness, that coincides with the timeframe in which the applicant must submit evidence of his continuous residence and continuous physical presence in the United States.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or 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 previous directors' decisions to deny the application for temporary protected status and to dismiss the appeal 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. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to meet this burden.

**ORDER:** The appeal is dismissed.