



U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE:

[REDACTED]

Office: Nebraska Service Center

Date:

AUG 31 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:

[REDACTED]

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel on behalf of the applicant requests that the Service reopen the TPS application, and submits additional 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).

Along with his application for TPS, the applicant submitted the following documentation:

1. A certificate of citizenship dated March 21, 2001, from the El Salvador Consulate General in Chicago, Illinois.
2. Copies of his Salvadoran identification card.
3. A copy of his medical examination dated July 14, 2000, from the Cook County Hospital in Chicago, Illinois.
4. Copies of his Salvadoran birth certificate along with an English translation.
5. Copies of receipts dated May 29, 2000, from El Salvador for his birth certificate.

The record of proceedings reflects that his application for TPS was denied on March 29, 2002 due to the applicant's failure to appear for his scheduled fingerprint appointment. The director reopened the proceedings on March 17, 2003.

On March 24, 2003, 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. However, the applicant did not respond to the director's request for evidence. The director determined that the applicant had failed to establish his eligibility for TPS and denied the application, as a matter of law, on June 16, 2003.

On appeal, counsel, on behalf of the applicant, reasserted his claim and submitted the following documentation:

6. Copies of his Employment Authorization Card valid from September 10, 2002 to September 9, 2003.
7. An affidavit dated July 7, 2003, from [REDACTED] who stated that he had known the applicant since July 2000, and that the applicant had rented an apartment from him between July 2000 and January 2001.
8. A copy of an affidavit dated July 3, 2002, from an acquaintance, [REDACTED] who stated that he had known the applicant since July 2000.
9. An affidavit dated July 7, 2002, from an acquaintance, [REDACTED] who stated that he had known the applicant since August 2000.
10. An affidavit dated July 7, 2003, from an acquaintance, [REDACTED], who stated that he had known the applicant since July 2000.

On appeal, counsel for the applicant states that the applicant had never received the Service's request for evidence on March 24, 2003, and that the applicant had provided the Service with all the necessary documentation with his original TPS application. Counsel also stated that the applicant had submitted copies of money orders sent to his daughter, [REDACTED] in El Salvador in 2000; however, the record of proceedings does not contain these documents.

The statements as detailed in Nos. 7, 8, 9, and 10 above, regarding the applicant's claimed presence in the United States before February 13, 2001, are not supported by corroborative evidence covering the requisite time period. The document, as detailed in No. 3 above, pre-dates the requisite time period by seven months. The affiant to No. 7 stated that the applicant had rented an apartment from him between July 2000 and January 2001; however, the applicant has not provided any evidence of rent payment, such as receipts. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these assertions. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence. Also, it is noted that the affiant to No. 8 stated that he was acquainted with the applicant since July 2000, but he did not provide information regarding the basis of this fact.

Further, although the document detailed in No. 1 above may suggest that the applicant was in the United States during the year 2001, the burden is on the applicant to establish his residence since February 13, 2001, and physical presence since March 9, 2001.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his 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 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.