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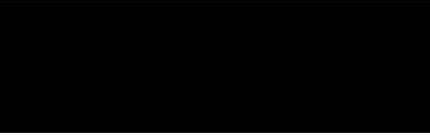
U.S. Department of Homeland Security

Citizenship and Immigration Services

**MI**

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street N.W.  
Washington, D.C. 20536



File:

Office: Texas Service Center

Date: **JAN 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

IN BEHALF OF APPLICANT: Self-represented

**INSTRUCTIONS:**

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas 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 indicated on his application that he entered the United States without a lawful admission or parole on January 5, 2001. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish proof of entry in the United States prior to February 13, 2001.

On appeal, the applicant asserts that his mother obtained his birth certificate from the El Salvador municipality. The applicant claims "anybody from your family can do this if you need it..."

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 term continuously physically present, as used 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 term continuously resided, as used 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General, now the Secretary, Department of Homeland Security (Secretary), announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary 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 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 application the applicant submitted affidavits from [REDACTED] and [REDACTED] who attested to the applicant's residence in the United States since January 5, 2001. The applicant also submitted a copy of his birth certificate which was issued on January 29, 2001.

The director determined that the issue date of the birth certificate contradicted the applicant's entry date indicated on the TPS application. As such, on February 5, 2003, the applicant was provided the opportunity to submit evidence establishing his entry into the United States prior to February 13, 2001. The applicant was requested to submit evidence such as a copy of his Form I-94, passport, official school records, utility bills, pay stubs, lease agreements, and employment records. The applicant, in response, provided a copy of his Sam's Club membership card indicating membership since August 3, 1994 in Mexico along with his Texas identification card and driver's license which expired in 1998 and 1999 respectively.

The affidavits from Mr. [REDACTED] and Ms. [REDACTED] are not, by themselves, persuasive evidence of residence or presence. While the acquaintances assert that the applicant was residing in the United States they provided no address for the applicant. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these affidavits; however, no such evidence has been provided.

The photo identity documents only serve to establish that the applicant was in the United States during 1998 and 1999. The applicant has not provided any credible evidence to establish his entry into the United States prior to February 13, 2001.

The applicant also has not submitted any credible evidence to establish that he has met the criteria for residence and physical presence 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.