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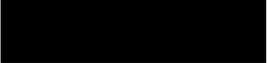


U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE: 

Office: VERMONT SERVICE CENTER

Date: JUL 26 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.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 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, the applicant submits a letter and additional documentation in an attempt to establish 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 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.

On March 9, 2001, the Attorney General designated El Salvador for TPS. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. The Secretary of the Department of Homeland Security granted a subsequent extension of that designation, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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.

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 record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on June 25, 2001, within the initial registration period. At the time of filing his application, the applicant indicated that he had last entered the United States on December 2, 2000.

On March 3, 2003, the applicant was requested to submit evidence to establish that he had entered the United States prior to February 13, 2001. The applicant was also requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001. In response, the applicant provided the following documentation:

1. A photocopy of the applicant's El Salvadoran birth certificate, with English translation;
2. A photocopy of the applicant's State of Virginia identification card, issued on June 11, 2001;
3. A photocopy of a Delta Airline ticket receipt showing he traveled from San Salvador, El Salvador to Atlanta, Georgia, on December 2, 2000;
4. Photocopies of pages from the applicant's El Salvadoran passport indicating entries into the United States as a non-immigrant visitor for pleasure (B-2) on June 8, 1997, at Los Angeles, California, and on December 2, 2000 at Atlanta, Georgia;
5. Photocopies of pay stub receipts from the Southern California Interpreting Service, Los Angeles, California, indicating that the applicant was paid in cash for temporary clerical services on three occasions: December 15, 2000, January 12, 2001, and, January 26, 2001;
6. A photocopy of a letter from Elsa Cecila Alfaro, Office Manager of the Southern California Interpreting Service, Los Angeles, California, stating that the applicant worked temporarily as a filing clerk during the months of December 2000 and January 2001; and,
7. A letter from the applicant, dated March 27, 2003, stating that: he cannot submit school records since he did not attend school in the United States; he does not have receipts or copies of rental contracts because he did not have permission from CIS to be employed, and was living with his sister in Los Angeles and did not pay her rent.

The director determined that the applicant had failed to establish his continuous residence in the United States since February 13, 2001 and his continuous physical presence since March 9, 2001. In his decision, the director advised the applicant that:

Although you state in your application that you last entered the United States on December 2, 2000, [CIS] records show that you later made an entry into the United States on June 9, 2001. This shows that you were not continuously physically present within the United States since March 9, 2001.

On appeal, the applicant submits a letter stating that he traveled to El Salvador after the earthquake due to a family emergency. He explains that his mother in El Salvador is a widow, that the earthquake damaged her home, and that she was literally living on the streets. He further explains that his grandmother's home was

completely destroyed, and that he went to El Salvador to see how his mother and grandmother were and what he could do for them. In support of his appeal, the applicant submits photocopies of money order receipts indicating that he forwarded money from the United States to his mother in El Salvador on July 31, 2002, August 17, 2002, and March 13, 2003.

No.'s 5 and 6 above, indicate that the applicant was physically present in the United States until on or about January 26, 2001. He subsequently departed the United States, on an unspecified date, and did not return until June 9, 2001. Based on the documentation submitted, it is concluded that the applicant has failed to establish that his departure from the United States constitutes a brief, casual, and innocent absence. Therefore, the applicant has 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.