

U.S. Citizenship
and Immigration
Services



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FILE: [Redacted]

Office: TEXAS SERVICE CENTER Date: JUL 29 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.

Cindy N. Gomez for
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 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 asserts that he does not have a lot of proof because he was a minor when he came to the United States. The applicant also submits additional evidence.

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 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).

The applicant did not submit any evidence with his initial application.

On January 28, 2003, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document and national identity document bearing a photograph and/or fingerprint. The applicant, in response, provided the following documentation:

1. A letter from [REDACTED] owner of [REDACTED] Houston, Texas, stating that the applicant worked for the body shop from February 2000 up to March 2001;
2. An undated letter from [REDACTED] pastor, [REDACTED] [REDACTED] indicating that the applicant has been attending the church "since two years ago;" and,
3. A photocopy of the biographic pages of his [REDACTED] passport issued by the [REDACTED] on February 26, 2003.

On September 9, 2002, the applicant also submitted:

1. A photocopy of his birth certificate with English translation; and,
2. An affidavit dated September 6, 2002, from [REDACTED] stating that the applicant has lived with her at [REDACTED], since January 2000, "working as Landscaping Worker."

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 19, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

1. An affidavit dated April 17, 2003, from [REDACTED] stating that: the applicant is her brother; she has been supporting him since his arrival in January 2000 as he was a minor; the applicant lived with her and their aunt, [REDACTED], at [REDACTED] [REDACTED] from January 2000 until February 2002, when they moved to the current address at [REDACTED] and, the applicant worked at [REDACTED] for two years and was paid cash;
2. Photocopies of the: Employment Authorization Card, valid from December 12, 2002 through September 9, 2003, Category C19, for [REDACTED] and, Texas Driver License for [REDACTED] Texas, issued in 2000 and expiring August 7, 2005.

It is noted that the affidavit from [REDACTED] does not assert that the applicant is a nephew as is asserted in the affidavit of [REDACTED] but rather that he was living with [REDACTED] and "working as [a] Landscaping Worker." The affidavit of [REDACTED] indicates that the applicant moved from the home of [REDACTED] in February 2002, while the affidavit of [REDACTED] is dated in September 2002, and indicates that the applicant was living and working there as of that time. 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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the inconsistencies between the affidavits of [REDACTED]

Moreover, the affidavit from [REDACTED] does not contain tax documentation, receipts, or other evidence to demonstrate her ability to support the applicant. The letter from the past employer does not conform to the regulatory provisions at 8 C.F.R. § 244.9(a)(2)(i)(A) through (D). The letter from the church pastor indicates the applicant has been attending the church "since two years ago," but is undated, and, therefore, not specific. This letter furthermore, does not conform to the regulatory provisions at 8 C.F.R. § 244.9(a)(2)(v)(A) through (G).

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.