



U.S. Citizenship
and Immigration
Services

U.S. Citizenship and Immigration Services
Department of Homeland Security
U.S. Department of Homeland Security

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FILE: [REDACTED]
[LIN 03 062 52225]

Office: NEBRASKA SERVICE CENTER

Date: JUN 16 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
Robert P. Wiemann, Director
Administrative Appeals Office

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 was eligible for late registration. The director also found that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods or his date of entry into the United States. Finally, the director determined that the applicant had failed to provide proof of nationality.

On appeal, the applicant 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on November 6, 2002.

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).

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On May 23, 2003, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying residence and physical presence in the United States, as well as proof of identity and nationality. The applicant, in response, provided evidence in an attempt to establish his identity and nationality, and to establish his residence and physical presence in the United States during the requisite periods.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on August 12, 2003. On appeal, the applicant submitted evidence in an attempt to establish his qualifying residence and physical presence in the United States. The applicant was in removal proceedings with the proceedings administratively closed on June 20, 2002, at Chicago, Illinois. Although the applicant appears to have satisfied the requirements under 8 C.F.R. § 244.2(f)(2), he did not file his initial TPS application until November 2002. Therefore, the applicant did not comply with the requirements of 8 C.F.R. § 244.2(g). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on May 23, 2003, to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant failed to respond to the notice.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 12, 2003. On appeal, the applicant reasserted his claim of continuous residence and continuous physical presence during the requisite periods and submitted the following documentation:

1. a birth certificate from El Salvador with English translation;

2. a letter to the applicant from his attorney [REDACTED] dated April 23, 2001;
3. a mailing envelope from [REDACTED] postmarked February 19, 2001;
4. a Form I-797C notice acknowledging that the applicant had filed a Form I-765, Application for Employment Authorization, on March 20, 2001; and,
5. a medical form showing that applicant was tested for tuberculosis at the United States Border Patrol facility in Port Isabel, Texas, on January 10, 2001.

These documents demonstrate that the applicant was present in the United States in the period from January through April 2001, but they are not sufficient to establish continuous residence in the United States since February 13, 2001 and continuous physical presence in the United States since March 9, 2001. The applicant has not submitted any evidence to establish continuous residence and continuous physical presence in the United States after March 20, 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 TPS on these grounds will also be affirmed.

The final issue to be addressed in this proceeding is whether the applicant has provided proof of identity and nationality.

Pursuant to 8 C.F.R. § 244.9(a)(1), an applicant for temporary protected status must submit evidence of identity and nationality. Acceptable documents to establish identity and nationality include a passport, a birth certificate accompanied by photo identification, or a national identity document from the alien's country of origin bearing photo and/or fingerprint.

On appeal, the applicant provided a photocopy of a birth certificate from El Salvador stating that [REDACTED] was born in Atiquizaya, El Salvador, on April 11, 1978; however, the applicant has not provided any photo identification to establish that he is the individual named in the birth certificate, nor has he provided any other evidence to establish identity and nationality as set forth at 8 C.F.R. § 244.9(a)(1). Therefore, the applicant has also failed to provide sufficient evidence to establish identity and nationality.

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.