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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

[Redacted]

FILE:

[Redacted]

Office: Vermont Service Center

Date:

JUN 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:

[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, Vermont 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 fulfill the requirements for official documentation.

On appeal, the applicant's representative submits a brief and additional documentation.

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 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 initially submitted documentation in the form of earning statements in the name of [REDACTED]

On February 20, 2002, the applicant was requested to submit evidence of a name change. The applicant was also requested to submit evidence that [REDACTED] resided in the United States as of February 13, 2001.

In response, the representative for the applicant submitted an affidavit from [REDACTED] that [REDACTED] is the same person as [REDACTED] and an affidavit from [REDACTED] that [REDACTED] is the same person as [REDACTED].

The director determined that the applicant had failed to submit sufficient evidence to fulfill the requirements for official documentation and denied the application on May 15, 2003.

On appeal, the applicant's representative states that the applicant never claimed to have changed his name and has always been forthcoming with the fact that he used the name [REDACTED]. The applicant's representative further states that the instructions in the request for evidence give a list of acceptable documentation and notes that the list is not exhaustive. Finally, the representative states that "sworn affidavits are acceptable proof of residency and name verification."

The representative submits a sworn statement from the applicant who explains that he has been working under the name of [REDACTED] because he did not have the required employment documentation to present at his workplace, but that his legal name is [REDACTED].

It is noted for the record that the request for evidence, dated February 20, 2002, lists as proof of a name change specific items such as a marriage certificate, termination of marriage (divorce decree/death certificate) adoption decree, or court order. In the Notice of Denial, dated May 15, 2003, the director also noted that acceptable evidence must show that the statistic or event was registered with civil authority.

The applicant has not submitted sufficient evidence that [REDACTED] and [REDACTED] are one and the same individual.

Additionally, the applicant has not submitted sufficient 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 will be affirmed.

It also is noted that [REDACTED] was arrested by USINS Border Patrol at Del Rio, Texas on August 1, 2000. It appears that the applicant was placed into removal proceedings; however, the final disposition of this arrest is not clear from the evidence of record.

An alien applying for TPS 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.