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

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FILE:



Office: TEXAS SERVICE CENTER Date: **III 05 2005**

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.

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 (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 his continuous residence in the United States during the requisite period.

On appeal, the applicant submits a statement and 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 designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 except as provided 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 announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted with validity of the latest extension until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 5, 2002.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On December 23, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite dates. The director noted

that the records of CIS indicated that the applicant did not enter the United States until May 29, 2001. The applicant, in response, provided photocopies of the following documentation: a letter dated January 9, 2003, from the Operations Manager, [REDACTED] Nursery, [REDACTED] Florida, stating that the applicant was employed with the company since February 10, 2001; an affidavit from a cousin attesting that the applicant resided with him in Miami, Florida, from December 2000 until November 2001; and, generic rent receipts dated in 2001.

The director determined that the applicant had failed to establish his qualifying continuous residence in the United States since February 13, 2001, and, therefore, denied the application on March 11, 2004.

On appeal, the applicant states that he entered the United States in January 2001, and lived in the area of Brownsville, Texas, from January through June 2001, when he was able to move and join his family in Florida. He states that during his first three months in the United States, he lived in Houston, Texas, and while traveling in the Brownsville, Texas, area on May 24, 2001, en route to Miami, Florida, he was detained by an immigration officer and was placed in proceedings. In support of the appeal, the applicant submits photocopies of: his Employment Authorization document (EAD) under Category C19, with validity from November 17, 2003 through March 9, 2005, and, his Social Security card.

The assertions of the applicant on appeal are not persuasive. According to the applicant's statement given to immigration officers at the time of his apprehension by the United States Border Patrol, at or near Sarita, Texas, on or about June 4, 2001, as recorded on the Form I-213, Record of Deportable/Inadmissible Alien, the applicant stated that he left his home in El Salvador on May 10, 2001, and entered the United States without inspection on or about May 29, 2001. The applicant's Motion to Change Venue filed with the Executive Office for Immigration Review, Houston, Texas, also indicated that the applicant entered the United States on May 29, 2001. The applicant has not established that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

It is also noted that the evidence submitted by the applicant in response to the notice of intent to deny is inconsistent with statements made by the applicant on appeal and in his undated letter submitted with his initial application. The applicant claims to have lived in Texas from January through July 2001, while the employer letter, [that also does not conform to regulatory requirements at 8 C.F.R. § 244.9(a)(2)(i)], and the statement of his cousin indicate that he was in Florida during that timeframe. 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).

Beyond the decision of the director, for the reasons discussed above, the applicant also has not established his continuous physical presence in the United States since March 9, 2001. The application must also be denied for this reason.

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.