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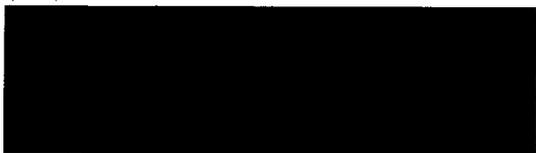
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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

MI



FILE: [REDACTED]
[WAC 03 258 52587]

Office: CALIFORNIA SERVICE CENTER

Date: JUN 23 2005

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record reveals that the applicant filed his application on August 13, 2003. On March 18, 2004, the applicant was requested to submit evidence of identity and nationality and additional evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. He was instructed to respond to the Notice of Intent to Deny on or before April 18, 2004.

The director determined that the applicant had abandoned his application by failing to respond to the Notice of Intent to Deny and issued a Notice of Denial on April 26, 2004. The director erroneously advised the applicant that he could file an appeal within 33 days.

The applicant responded to the Notice of Decision on May 11, 2004. The applicant states that he did respond to the Notice of Intent to Deny, and that he provided the requested evidence with his response.

The record indicates that the applicant's response to the Notice of Intent to Deny was received at the California Service Center on April 23, 2004, five days after the deadline indicated in the Notice of Intent to Deny, but three days prior to the issuance of the Notice of Decision. Therefore, it cannot be concluded that the applicant abandoned his application. The sole ground for the denial of the application has been overcome. The case will be reviewed in its entirety on a de novo basis.

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, 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 § 244.3;

- (e) Is not ineligible under § 244.4; and
- (f)
 - (1) Registers for Temporary Protected Status 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 the most recent extension until September 9, 2006, 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 first issue in this proceeding is whether the applicant has submitted sufficient evidence of identity and nationality.

In response to the Notice of Intent to Deny, the applicant submitted a color photocopy of his Salvadoran national identity card (cedula) with photograph and fingerprints. Therefore, it is concluded that the applicant has submitted sufficient evidence to establish his identity and nationality, and this ground for denial of the application has been overcome.

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

On March 18, 2004 the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant, in response, provided the following:

1. copies of two certificates, both dated June 21, 2002, from the [REDACTED] Unified School District, Newport-Mesa Adult School, Newport, California, one indicating that the applicant participated in a General Education Development (GED) class in the Spring Semester of 2002 and one recognizing the applicant's outstanding attendance during the GED class;
2. a copy of a Certificate of Recognition from [REDACTED] in Compton, California, dated May 25, 2002, recognizing the applicant's participation in the college's GED Program;
3. a certificate from the [REDACTED] School dated June 24, 2002, indicating that the applicant successfully passed the GED Test on March 20, 2002;

4. copies of ADP earnings statements purportedly reflecting the applicant's employment by [REDACTED], in Huntington Beach, California, during the following pay periods: October 4 to October 10, 2000; October 25 to October 31, 2000; and November 29 to December 5, 2000;
5. copies of EasyPay earnings statements purportedly reflecting the applicant's employment by [REDACTED] LLC, in Pico Rivera, California, for the following pay periods: January 13 to January 19, 2001; January 20 to January 28, 2001; February 17 to February 23, 2001; March 10 to March 16, 2001; March 17 to March 23, 2001; September 22 to September 28, 2001; November 24 to November 30, 2001; January 26 to February 1, 2002; March 30 to April 5, 2002; September 28 to October 4, 2002; October 26 to November 1, 2002; November 2 to November 8, 2002; and December 14 to December 20, 2002;
6. copies of pay statements from [REDACTED] Restaurant Group, Inc., in Rosemead, California, dated: November 29, 2003; December 27, 2003; January 10, 2004; and January 24, 2004; and,
7. copies of EasyPay pay statements purportedly reflecting work performed by the applicant for [REDACTED] in Cypress, California, from February 6 to February 19, 2004 and March 5 to March 18, 2004.

The director denied the application on April 26, 2004.

On appeal, the applicant states that he did respond to the Notice of Intent to Deny, and that he provided the requested documentation. The applicant failed to submit any additional evidence on appeal.

The pay statements submitted in response to the Notice of Intent to Deny appear to have been altered. The original employee's name and social security number appear to have been eradicated and the applicant's name and social security number substituted. 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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has not submitted sufficient credible evidence to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status on this basis 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.