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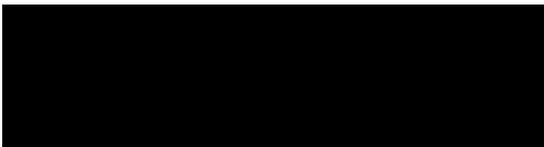
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: JAN 05 2006
[SRC 01 191 58844]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was initially denied due to abandonment by the Director, Texas Service Center, on December 4, 2003. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen. The applicant submitted an untimely motion to reopen on March 11, 2004. The director, however, erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. The matter is now before the Administrative Appeals Office (AAO). Ordinarily, when an application is denied due to abandonment, the AAO has no jurisdiction. However, the abandonment denial was made in error, and, therefore, the appeal will be considered. The appeal will be sustained and the application will be approved.

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 appear for his scheduled fingerprinting appointment.

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 (INS), now Citizenship and Immigration Services (CIS), on April 20, 2001.

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 March 6, 2003, the applicant was requested to submit evidence establishing his nationality. In response, the applicant submitted photocopies of pages of his El Salvadoran passport issued in San Miguel, El Salvador, on January 22, 1993, and his State of Texas Identification Card issued in 1998.

The director determined that the applicant had failed to report for his fingerprinting appointment scheduled on May 6, 2003, concluded that the applicant had abandoned his application, and, therefore, denied the application on December 4, 2003.

The applicant responded to the Notice of Decision to Deny on March 11, 2004, three months after the issuance of the director's decision. The applicant states that he never received his work authorization and inquired at his local CIS office. The local CIS office informed him that he had not received his employment authorization because he had failed to appear for fingerprinting. He states that the local CIS office also told him to file a motion to reopen. The applicant submits additional documentation in support of his claim, consisting of receipt notices regarding his applications.

It is noted that the applicant had been previously fingerprinted, and that, therefore, the applicant did not abandon his application. The record includes the INS letter dated June 6, 2001, acknowledging receipt of the applicant's fingerprint fee. CIS records reflect that the applicant was initially scheduled for fingerprinting in 2001. The Federal Bureau of Investigation (FBI) fingerprint results report processed by the FBI on November 14, 2001, indicated that the applicant did not have a criminal or other record at that time. In addition, the applicant submitted a Certificate of Disposition, Harris County District Clerk, Houston, Texas, indicating that on September 8, 1994, he was found guilty of unlawfully carrying a weapon, a Misdemeanor Class A charge, and was sentenced to ten days confinement in the Harris County Jail.

The applicant has submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The evidence of record consists of copies of: a BancoSal Inc. remittance receipt dated January 10, 2001, naming the applicant as the beneficiary; two Reliant Energy billing statements in the applicant's name for the period of December 7, 2000 through January 11, 2001, and for January 11, 2001 through February 8, 2001; two money orders dated March 3, 2001; the Certificate of Disposition, Harris County District Clerk, Houston, Texas, issued on March 16, 2001; the applicant's employment authorization card under Category C19, valid from February 24, 2003 through September 9, 2003; correspondence from INS and CIS; and, the applicant's State of Texas Identification Card, issued in 1998 and valid through March 29, 2004. It is determined that the record as a whole contains sufficient evidence to establish that the applicant has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2(b) and (c).

The applicant also submitted photocopies of the biographic page of his El Salvadoran passport issued in El Salvador in 1993, and his El Salvadoran birth certificate, with English translation. He has also met the nationality requirement described in 8 C.F.R. § 244.2(a).

Consequently, the director's decision to deny the application for temporary protected status due to abandonment was made in error, and the applicant has met the requirements for TPS eligibility.

It is noted that the record includes a Warrant of Deportation, issued at Houston, Texas, on April 12, 1994, based upon the applicant's failure to depart the United States following a final order of the Immigration Judge, Houston, Texas, in which the applicant withdrew his Form I-589, Application for Asylum in the United States, and was granted voluntary departure to be effected on or before April 8, 1994. It is unclear why the initial FBI fingerprint results report did not include this apprehension by the United States Border Patrol, or the Misdemeanor Class A charge, unlawfully carrying a weapon.

The record also includes a Form I-601, Application for Waiver of Ground of Excludability, filed by the applicant with his initial TPS application. On the waiver application, the applicant states that on or about September 15, 1993, he was apprehended by Immigration and Naturalization Service officers, was interviewed, fingerprinted and kept in Arlington, Texas for one and a half months. He states that he was released on bond and received an order to appear in immigration court. He states that he was granted voluntary departure by an Immigration Judge, but did not depart the United States. The applicant apologizes for his actions and requests that his waiver be granted. The waiver application bears a notation, "Terminated 02-27-03."

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 met this burden.

ORDER: The appeal is sustained and the application is approved.