



U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

JUN 27 2006

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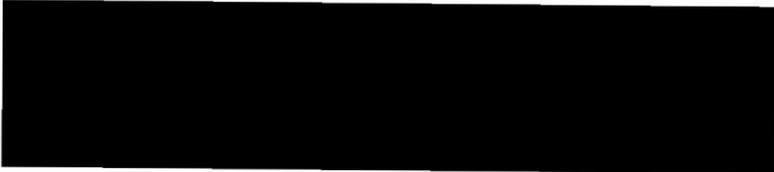
IN RE:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 continuous residence in the United States since February 13, 2001.

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 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.

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 latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 20, 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 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record reveals that the applicant was apprehended by the United States Border Patrol on March 12, 2001, after having entered the United States without inspection near Eagle Pass, Texas. At the time of his apprehension, the applicant was traveling with his nephew [REDACTED] (CIS registration number [REDACTED]). The applicant and his nephew both admitted to being citizens of El Salvador. The applicant told the apprehending officers that he left his home in El Salvador on or about February 12, 2001 and traveled by bus through Guatemala to Mexico, entering the United States on or about March 12, 2001. The applicant stated that he and his nephew entered the United States with the intention of traveling to Houston, Texas, where the applicant's sister [REDACTED] lived.

The applicant was issued a Form I-862, Notice of Appear, and released on his own recognizance. On July 5, 2002, an Immigration Judge in Houston, Texas, granted the applicant the privilege of voluntary departure to El Salvador on or before November 2, 2002, with an alternate order of deportation if the applicant failed to depart in compliance with the grant of voluntary departure. The applicant failed to depart the United States in compliance with the grant of voluntary departure.

On February 7, 2003, the Acting District Director, Houston, issued a Form I-166 ordering the applicant to report to the Houston District Office for removal to El Salvador on March 12, 2003, and a Form I-205, Warrant of Removal/Deportation. The applicant failed to appear as ordered, and the warrant of removal remains outstanding.

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on February 10, 2001. In support of the application, the applicant submitted an affidavit from his sister [REDACTED] stating that the applicant entered the United States on February 10, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and denied the application on December 7, 2004.

On appeal, the applicant now claims that he first entered the United States on February 10, 2001, near Eagle Pass, Texas. The applicant states:

A month later after I had arrived in the United States my nephew was detained in Eagle Pass, Texas and I was the only relative my nephew knew that was here in the United States, so he called me to go pick him up from immigration because the officers from INS had told him that he could be release[d] if a relative would go pick him up. Knowing that I myself was illegal in this country I decided to go pick up my nephew up from the immigration detention center because I could not leave him there. When I arrived at that office I was presented with a notice to appear for myself.

The applicant submits a photocopy of a Form I-220, Order of Release on Recognizance, dated March 12, 2001.

The applicant's claim on appeal that he arrived in the United States on or about February 10, 2001, is not supported by the record of proceeding. The Form I-213, Report of Deportable Alien, contained in the record of proceeding indicates that the applicant and his nephew were both apprehended on March 12, 2001, near Eagle Pass, Texas, after having entered the United States without inspection. The applicant specifically told the apprehending officers that he and his nephew had left his home in El Salvador on or about February 12, 2001, intending to enter the United States without inspection and travel to Houston, Texas, to join the applicant's sister, and his nephew's mother, [REDACTED]. There is no indication on the Form I-213 that the applicant claimed at the time of his apprehension to have entered the United States on or about February 10, 2001, or that he had traveled to Eagle Pass to pick up his nephew from the immigration detention center. The Form I-862, Notice to Appear, also indicates that the applicant entered the United States near Eagle Pass, Texas, on or about March 12, 2001. Furthermore, the applicant stated in an affidavit dated March 25, 2002, that he had been served with a copy

of the Form I-862, Notice to Appear, and that all of the allegations of fact contained in that document are true and correct. The only evidence the applicant has submitted to corroborate his revised claim on appeal to have entered the United States on or about February 10, 2001, is an affidavit from his sister, [REDACTED]. Without corroborative evidence, affidavits are not sufficient to establish an applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v).

The applicant has not provided any explanation as to the fact that his current claim to have entered the United States on February 10, 2001, directly contradicts information contained in documents contained in the record of proceeding indicating that he did not enter the United States until March 12, 2001. 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).

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 requirement described in 8 C.F.R. § 244.2(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.