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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Nebraska Service Center Date: FEB 12 2004
LIN 02 119 52830

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 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomez for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska 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. § 1254a.

The director determined that the applicant had failed to provide clear and conclusive evidence of his date of entry into the United States, continuous residence since February 13, 2002, and continuous physical presence since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel asserts that the applicant has provided conclusive evidence that he meets the residence and physical presence requirements for TPS. Counsel further asserts that the Service erroneously classified the affidavits provided by the applicant as "secondary" and therefore insufficient to grant TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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.

The term *continuously resided* as used in 8 C.F.R. § 244.1 means residing in the United States for the entire period specified in the regulations and since February 13, 2001. 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 term *continuously physically present* as used in 8 C.F.R. § 244.1 means actual physical presence in the United States for the entire period specified in the regulations and since March 9, 2001. 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 record reflects that the applicant filed his TPS application on February 20, 2002. The applicant was requested on April 15, 2002, to submit additional evidence to confirm his nationality and identity, to establish that he has continuously resided in the United States since February 13, 2001, and that he has been continuously physically present since March 9, 2001. In response, the applicant furnished his photo identity and evidence of his nationality. The director noted, however, that the two statements furnished from friends and/or family members do not substantiate clear and conclusive evidence of the applicant's date of entry, continuous residence, and continuous physical presence, and are considered secondary evidence. He maintained that they are of very little evidentiary value without the support of probative evidence.

Counsel's assertion that the Service (now CIS) erroneously classified the evidence provided by the applicant as "secondary" is not persuasive. Pursuant to 8 C.F.R. § 244.9(a), applicants shall submit all documentation as required in the instructions or requested by CIS. CIS may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

The director, in this case, listed examples of evidence the applicant may submit to establish continuous residence and continuous physical presence. Additionally, 8 C.F.R. 244.9(a)(2)(i), (ii), (iii), (iv), (v), and (vi) list the evidence the applicant may submit to establish proof of continuous residence in the United States during the requisite period of time. The applicant, in response, submitted two affidavits from friends and/or family members. He did not submit any of the evidence listed by the director and in the Service regulations.

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).

On appeal, the applicant submits various documents that show his presence in the United States since June 12, 2001. No documentation was provided to show entry and continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The applicant has failed to establish that he met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c).

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.