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

U.S. Citizenship and Immigration Services

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[redacted]

PUBLIC COPY

FILE: [redacted] Office: Texas Service Center Date: FEB 20 2004

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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Cindy M. Gomez for

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 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 he had been continuously physically present in the United States since March 9, 2001, to the date of filing his application, August 15, 2001.

On appeal, the applicant stated that his documents were lost and he had no proof of presence in the year 2001.

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 of a 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 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, or

(2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:

(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 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 entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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).

Along with his application for TPS, the applicant provided the following documentation:

1. His original Salvadoran birth certificate in Spanish.
2. A utility bill dated October 6, 2000 from the PNM Electric and Gas Services.
3. Original Earning Statements from Sante Fe Dining, Inc., for the pay dates of August 4 and 18, and December 8, 2000.

On December 31, 2002, the applicant was requested to submit evidence establishing his physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

4. A copy of a Clearance Letter dated March 2, 1999, from the Texas Department of Public Safety, indicating that the suspension of his driving privileges had been withdrawn.
5. Copies of his Salvadoran personal identification card along with an English translation.
6. A copy of his pay-stub dated October 1, 2002, from the Bayou City Patrol Division.
7. Copies of his identification cards from the Bayou City Patrol Division, the Texas Commission on Private Security, and the Texas Department of Public Safety.
8. A copy of a hand-written purchase order receipt for a vehicle dated February 2, 2001, from Luis's Auto Sales, Santa Fe, New Mexico.
9. A copy a registration renewal receipt dated November 22, 2002, from the Texas Department of Transportation.
10. A copy of a billing statement from the Express Telephone Service, Arlington, Texas, dated September 15, 2002.
11. A copy of a Policy Declarations from the Cal Eagle Insurance Company dated February 18, 1999.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 3, 2003. The director noted in his decision that the applicant did not provide any evidence of his presence in the United States between the two critical dates of March 9, 2001, and the date that applicant filed his TPS application, August 15, 2001.

The hand-written purchase order detailed in No. 8 above may indicate that the applicant was in the United States during the year 2001. However, the burden is on the applicant to establish his physical presence since March 9, 2001. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his physical presence in the United States since March 9, 2001.

The applicant has not submitted sufficient credible evidence to establish his physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status 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.