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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, DC 20536

[redacted]

File: [redacted] [LIN 02 269 51907] Office: Nebraska Service Center Date: JAN 07 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:

[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 M. 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 sustained.

The applicant is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole on May 23, 2000. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, counsel submitted additional documentation establishing the applicant's claim of eligibility for TPS.

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 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 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).

On November 9, 2002, and again on January 23, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document. The applicant, in response, provided the following documentation:

1. An envelope bearing an illegible post-mark and reflecting a St. Louis, Missouri, address for the applicant;
2. A copy of a North Carolina Identification Card issued to the applicant on July 5, 2000;
3. Copies of pay-stubs issued to the applicant by Uno Restaurants, Inc., for the period from August 20, 2000, through October 22, 2000;
4. A copy of a hand-written IRS Form 1099-Misc report for the 2000 tax year issued to the applicant by JV Pauley Painting Co., Inc., reflecting a St. Louis, Missouri, address for the applicant; and,
5. An affidavit from an acquaintance, [redacted] who attested to the applicant's residence in the United States since February 13, 2001, and his physical presence since March 9, 2001.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 24, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

6. An "Employee Data Sheet" dated March 15, 2003, from Pizzeria Uno in Kirkwood, Missouri, indicating that the applicant had worked there as a dishwasher since August 14, 2000;
7. A pay-stub for the period from February 11, 2001, through February 17, 2001, bearing the applicant's claimed Social Security Number;
8. A money order receipt dated February 12, 2001, reflecting a St. Louis, Missouri address for the applicant;
9. An invoice for a set of tires purchased by the applicant in St. Louis, Missouri, on March 9, 2001;
10. IRS Form W-2 Wage and Tax Statements issued to the applicant by Uno Restaurants, Inc., for the 2001 tax

year;

11. An affidavit from an acquaintance, who attested to the applicant's residence in the United States since February 13, 2001, and his physical presence since March 9, 2001;
12. An affidavit from an acquaintance, who attested to the applicant's residence in the United States since February 13, 2001, and his physical presence since March 9, 2001; and,
13. An affidavit from an acquaintance, who attested to the applicant's residence in the United States since February 13, 2001, and his physical presence since March 9, 2001.

The applicant has submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. 244.2(b) and (c). Therefore, the director's decision will be withdrawn and the application will be approved.

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.