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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 03 011 50720]

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.

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 in March 1998. 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, by failing to establish his use of a claimed alias, the applicant had failed to establish his qualifying residence in the United States since February 13, 2001, and his continuous physically presence in the United States since March 9, 2001.

On appeal, the applicant reasserted his claim of eligibility.

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).

The applicant indicated on his application that he had used the alias [redacted] In support of his application, the applicant submitted the following documentation:

1. A copy of his Salvadoran birth certificate with an English translation;
2. A copy of the biographic page of his Salvadoran passport;
3. A copy of a Colorado driver's license issued to [redacted] on September 8, 2000;
4. A copy of a proof of insurance card issued to [redacted] on March 16, 2001;
5. A copy of a pay-stub issued to [redacted] by Hernan Fire Protection on October 25, 2001; and,
6. Copies of pay-stubs issued to [redacted] by USFP on September 4, 1998, and May 26, 2000.

On January 17, 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 evidence establishing his use of the name [redacted] The applicant, in response, explained that he had used his step-brother's name, [redacted] and provided the following documentation:

7. Copies of pay-stubs issued to [redacted] by USFP on July 28, 2000, and August 11, 2000;
8. Copies of account statements issued jointly to [redacted] and [redacted] by Wells Fargo from November 2000 through July 2002;
9. Copies of pay-stubs issued to [redacted] by Hernan Fire Protection on December 22, 2000, December 29, 2000, March 16, 2001, and April 13, 2001, May 11, 2001, and July 6, 2001;
10. Copies of proof of insurance cards issued to [redacted] on July 31, 2001, and February 16, 2002; and,

11. A copy of a pay-stub issued to [redacted] on January 31, 2003, by Elite Fire Protection Systems reflecting a hire date of August 16, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 3, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

12. A letter from a representative of Wells Fargo Home Mortgage who identified the applicant by his passport photograph (No. 2 above) as the holder of the accounts referenced in No. 8 above;
13. A statement from the applicant's mother, [redacted] attesting to his use of the alias [redacted]
14. A statement from the applicant's sister attesting to his claimed residence and presence in the United states;
15. A letter from Elena Pisqui, the "Pastor's Wife" at Mies Ministries in Denver, Colorado, who stated that the applicant first visited their church in April 1998 and became a member on April 18, 2003; and,
16. Copies of numerous letters of recommendation from relatives and acquaintances attesting to his residence in the United States since 1998.

The applicant has submitted sufficient evidence to establish his use of the alias [redacted]" The documentation submitted by the applicant establishes his qualifying residence and physical presence in the United States and satisfies 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.