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U.S. Citizenship and Immigration Services

[redacted]

MAR 1 1 2004

FILE: [redacted] Office: California Service Center Date:

IN RE: Applicant: [redacted]

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

ON BEHALF OF PETITIONER: [redacted]

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. Toney for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was initially granted. It was subsequently reopened and approval was withdrawn by the Director, California Service Center. The appeal is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 withdrew 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 was a national of a designated country.

On appeal, counsel states that the law does not state whether a spouse of child of a TPS applicant could qualify regardless of their nationality. According to the applicant, for the sake of family unity, the applicant believes he is eligible for TPS as a spouse of a TPS applicant.

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 designated by the Attorney General [now, the Secretary, Department of Homeland Security (Secretary)] 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.

(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

Continuously physically present 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.

Continuously resided 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 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.

Brief, casual, and innocent absence 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.

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 August 27, 2002, in a Service Motion to Reopen /Intent to Withdraw, the applicant was informed that because he is a native of Mexico he is ineligible for TPS, and that the director intended to withdraw his approval of the applicant's TPS. In response, the applicant stated that he never claimed to be a Honduran citizen. According to the applicant, he applied as the spouse of a TPS-eligible applicant. The applicant did not furnish any evidence to establish that he was eligible for TPS. Therefore, the director denied the application.

On appeal, counsel states that the applicant is married to a Honduran native who is eligible for TPS. Counsel contends that the regulations establish that spouses of TPS registrants qualify for TPS because immigration laws favor family unity. As proof of his marriage, the applicant resubmitted a copy of his marriage license.

As indicated above, however, under 8 C.F.R. § 244.2(a) the first qualification for TPS is that the applicant must be a national of a designated foreign state. Contrary to counsel's assertions, while CIS regulations may allow spouses of TPS applicants to file for TPS after the initial registration period has closed; these regulations do not relax the requirements for eligibility for TPS. The applicant is still required to meet the nationality requirements in order to be granted TPS as the spouse of a TPS recipient. As a national of Mexico, the applicant cannot meet these requirements. There is no waiver available, even for humanitarian reasons, of the requirements stated above.

There is currently no provision granting TPS to nationals of Mexico. 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.