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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 25 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

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.

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 determined that the evidence furnished failed to establish that the applicant arrived in the United States on or before February 13, 2001, and has been continuously physically present in the United States since March 9, 2001. He further noted that the applicant did not submit valid photo identification when he filed his TPS application. The director, therefore, denied the application.

On appeal, the applicant states that he cannot prove that he entered the United States prior to February 13, 2001. However, he had furnished affidavits to prove date of entry and residence in the United States. He submits additional evidence.

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 July 1, 2002. In a notice of intent to deny dated January 4, 2003, the applicant was requested to submit: (1) evidence to show that he has resided in the United States since February 13, 2001; (2) evidence to show that he has been continuously physically present since March 9, 2001 to the date of filing his application; (3) a copy of the biographical pages of his passport; and (4) a photo identification. The director reviewed the evidence furnished, in response to his request, and noted that although the applicant claimed to have entered the United States on November 14, 2000, the evidence furnished did not show that the applicant resided in the United States since prior to February 13, 2001, nor is there any other evidence in the record of proceedings that he arrived in this country on or before that date.

While the director maintained that the applicant did not submit valid photo identification, it is noted that the record of proceeding contains a copy of the applicant's El Salvadoran passport.

On appeal, the applicant states that he cannot prove that he entered the United States prior to February 13, 2001. He submits an affidavit from [redacted] claiming to be the owner of Texano Deli, stating that the applicant worked as his employee in his business from January 13, 2001 to April 5, 2001. The employment affidavit, however, has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. Furthermore, even if the applicant was, in fact, employed by Mr. [redacted] he still has not established continuous residence since April 2001 to the date he filed in application on July 1, 2002.

The applicant has not submitted sufficient evidence to establish that he has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001, to the date he filed his application. He has, therefore, failed to establish that he has met the criteria 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.