

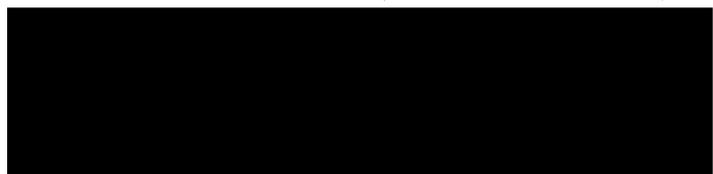
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE:



[WAC 03 059 52140]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 09 2007

IN RE:

Applicant:



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.

Cindy N. Gomez

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On appeal, the applicant submits a statement and additional evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

In a Notice of Intent to Deny (NOID) dated March 17, 2004, the applicant was requested to submit evidence to establish: (1) continuous residence in the United States since February 13, 2001; (2) continuous physical presence from March 9, 2001, to the date of filing the application; and (3) his nationality and identity. The director noted that the record did not contain the applicant's response; therefore, the director concluded that the applicant had abandoned his application and denied the application on April 26, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. The response was received by the California Service Center on April 21, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on September 11, 2002.

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).

The first issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

In the NOID dated March 17, 2004, the applicant was requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period. In response, the applicant submitted:

1. A statement dated April 15, 2004, written in the Spanish language, from [REDACTED]

The statement from [REDACTED] cannot be accepted because it was not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3).

On appeal, the applicant asserts that he has lived and worked in Los Angeles, California, since February 1, 2001, and he requests that he be allowed to remain in the United States. He submits:

2. A statement dated May 10, 2004, from [REDACTED] indicating that he has known the applicant since February 7, 2001, and since that date, the applicant has periodically performed odd jobs in his domicile, to include painting, gardening, house repair, pet care, and babysitting.

The statement or letter of employment from [REDACTED] 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 letter was not notarized, it does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff, if any. Moreover, the letter was not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since November 11, 2000.¹ It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The next issue in this proceeding is whether the applicant is a citizen or national of El Salvador.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state....Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

¹ The applicant stated, on appeal, that he has lived and worked in California since February 1, 2001; however, it is noted that the applicant indicated on the TPS application that his date of entry into the United States was November 11, 2000.

The applicant initially furnished with his TPS application a copy of his El Salvadoran birth certificate with English translation. In the NOID dated March 17, 2004, the applicant was requested to provide documentation to establish his nationality and identity; the director listed examples of documents the applicant could submit. In response, no evidence was furnished to establish nationality and identity.

On appeal, the applicant neither addressed nor submitted any evidence to establish his nationality and identity. Consequently, the director's decision to deny the TPS application on this ground will also be affirmed.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on September 11, 2002, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). Therefore, the application will also be denied for this reason.

It is also noted that the applicant stated on an attachment to his application for re-registration (Form I-821), filed on May 12, 2005, that he "was arrested on or about February 2004 by the Van Nuys Police Department for D.U.I. Court disposition will be sent upon request." Additionally, the Federal Bureau of Investigation fingerprint results report, dated April 24, 2006, indicates that the applicant was arrested: (1) on February 2, 2004, in Los Angeles, California, for driving under the influence of alcohol/drugs; and (2) on May 7, 2004, in Norwalk, California, for driving under the influence with .08 percent blood alcohol level or more. The final court dispositions of these arrests are not included in the record of proceeding. Any future actions before the Department of Homeland Security must address the final dispositions of these arrests.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.