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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
[SRC 01 202 54097]

Office: TEXAS SERVICE CENTER

Date: JUN 13 2005

IN RE:

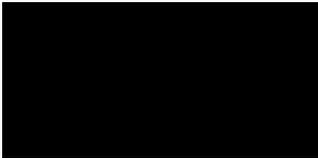
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 noted that according to the applicant's immigration papers, he entered the United States on February 27, 2001 in Laredo, Texas. The director denied the application after determining that the applicant's file contained documentation indicating that he did not have residence and physical presence for the dates specified by the Attorney General for El Salvador to receive TPS benefits.

On appeal, counsel states the applicant's last entry into the United States was February 1988 as stated in the renewal of the applicant's TPS which counsel prepared. Counsel asserts that the applicant did not enter the United States on February 27, 2001 as stated by the director in the decision to deny. Counsel further states that the INS apprehended the applicant on that day and placed him in removal proceedings. Counsel further argues that the applicant has presented proof of his physical presence since 2000 and that the applicant is obtaining more proof and will provide that additional proof within 30 days.

Counsel states that he was submitting a brief and/or evidence to the AAO within 30 days. However, no brief or additional evidence was submitted. Therefore, the record must be considered complete.

Counsel argues that even if the applicant had departed the United States and reentered on February 27, 2001, he still would be TPS eligible as long as he maintained residency in the US since before February 13, 2001. Counsel indicates the AAO should reverse the decision of the director that was based upon an erroneous date of entry "which not even the Immigration Judge accepted." Counsel submits seven documents relating to the applicant's presence in the United States. These documents are dated from February 11, 2000 to November 22, 2000. Counsel also submits a copy of an order from an Immigration Judge in San Antonio, Texas dated May 10, 2001 terminating removal proceedings for the 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 as 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 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. The Secretary of the Department of Homeland Security has granted a subsequent extension of the TPS designation with validity until September 9, 2006, 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 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 record shows that the applicant filed his TPS application on May 22, 2001. To support his application, the applicant submitted a copy of his birth certificate, a translation of his birth certificate and bill of sale showing that he purchased an automobile from [REDACTED] Sales in Dallas, Texas on January 6, 2000. On appeal, the applicant submits an insurance card for his automobile with an effective date of February 11, 2000 showing his address in Dallas, Texas. He also submits a copy of an unsigned Texas Department of Public Safety identification card issued to him on July 14, 2000 and a copy of a receipt for a traffic ticket that he paid to the City of Dallas Municipal Court on November 22, 2000. Finally, the applicant forwards a letter to him from the Texas Department of Health dated July 26, 2000 documenting an amendment to a birth certificate along with three receipts dated February 22, 2000, April 11, 2000 and May 7, 2000 for car payments that he made for his automobile.

The record shows that on February 27, 2001 a criminal complaint (case number L-01-708M) was filed in the United States District Court of the Southern District of Texas. A United States Magistrate Judge heard the case on that day. The applicant was charged with and pled guilty to unlawfully entering the United States on or about February 27, 2001, at a place other than as designated by immigration officers in violation of 8 U.S.C. § 1325, Entry of Alien At Improper Time or Place.

The charge was based on verbal statements by the applicant who admitted to being a citizen of El Salvador who entered illegally into the United States by wading the Rio Grande River near Laredo, Texas, thus avoiding immigration inspection. He also admitted to not having proper documents to enter, travel through or remain in the United States. After the applicant pled guilty to the charge, the judge convicted him of the charged offense.

Upon initial submission and on appeal, the applicant submits records documenting his physical presence in this country from January 6, 2000 to November 22, 2000. However, the applicant has not presented any evidence of continuous physical presence in this country from November 23, 2000 until February 27, 2001 when he reentered the United States without inspection near Laredo, Texas. Also, the applicant has not submitted evidence for the period from February 27, 2001 through May 22, 2001. Therefore, he has not documented his continuous residence from before February 13, 2001 to May 22, 2001.

The applicant has failed to establish that she has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status is affirmed.

Form I-821, Application for Temporary Protected Status

Form I-765, Application for Employment Authorization

The record reflects that the applicant has submitted markedly inconsistent information on his applications. On his Form I-765, Application for Employment Authorization (AEA) and Form I-821, Application for Temporary Protected Status (ATPS) signed May 22, 2001 he stated that he last entered the United States in 1998. On his

AEA and ATPS signed July 18, 2002 he stated that he last entered the US in 1989 and in 1987 respectively while on his AEA and ATPS signed August 4, 2003 he stated that he last entered this country in or about February 1988. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepant information. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it shall be concluded that the applicant has failed to provide reliable evidence upon which to base this TPS application.

The regulations at 8 C.F.R. § 244.9, state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* 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. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (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.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his birth certificate

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along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification or national identity document. 8 C.F.R. § 244.2(a)(1). Therefore, the application is denied for this additional reason.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements 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.