



U.S. Citizenship
and Immigration
Services

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FILE:

[Redacted]

Office: TEXAS SERVICE CENTER Date: OCT 03 2005

[SRC 01 238 56081]

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 due to abandonment by the Director, Texas Service Center. The applicant filed a motion to reopen that is now before the Administrative Appeals Office (AAO). Ordinarily, when a case has been denied due to abandonment, the AAO lacks jurisdiction over the case. However, in this instance, the record reflects that the denial due to abandonment was made in error. Therefore, the matter will be reviewed by the AAO. The motion will be granted and the application will be denied.

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.

"Affected Party" means the person or entity with legal standing in a proceeding. 8 C.F.R. § 103.3(a)(1)(iii)(B).

An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee which has been accepted will not be refunded. 8 C.F.R. § 103.3(a)(2)(v).

On motion, the record includes a statement signed by [REDACTED] and additional evidence in the applicant's name. The record does not include a Form G-28, Notice of Entry of Appearance as Attorney or Representative, submitted by [REDACTED] and signed by the applicant authorizing [REDACTED] representation of the applicant. There is no documentation identifying [REDACTED] as an accredited representative recognized by the Board of Immigration Appeals. In general, such a submission would be rejected as having been improperly filed. However, because the denial of the application due to abandonment was made in error, the matter will be reviewed, and the applicant will be considered as self-represented, with the decision rendered only to him.

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 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.

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 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. Subsequent extensions of the TPS designation have been granted with validity of the latest extension until September 9, 2006, 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 reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 30, 2001.

The burden of proof is upon the applicant to establish that he 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

On February 7, 2003, the applicant was requested to submit additional evidence establishing his date of entry prior to February 13, 2001, his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The director determined that the record did not contain a response from the applicant and, therefore, denied the application due to abandonment on January 28, 2004.

The record, however, includes a response from the applicant, along with the original mailing envelope postmarked as of February 11, 2003. The applicant, in response, provided photocopies of the following documentation: a letter dated October 17, 2001, from the Social Security Administration stating that the applicant would receive his Social Security in approximately two weeks; pay stubs dated in February, March and April 2001; and, an energy bill dated December 5, 2001. Therefore, the denial due to abandonment was made in error.

The applicant had also previously submitted: a birth certificate, with English translation; an Internal Revenue Service (IRS) Taxpayer Identification Card; North Carolina Division of Motor Vehicles Temporary tag receipt dated May 15, 1998, Dealer Plate dated October 15, 1999, and Registration Card dated July 15, 2000; a McKenney Family Dealership receipt for an automobile dated October 14, 1999; AllCare Insurance documents dated May 10, 1999; Geico Insurance documents dated March 27, 2000; money transfer receipts dated in 1997; a State of North Carolina driver license issued on May 11, 1999; a State of Texas Identification Card issued in 1998; a Sam's Club card issued in 2000; and, pay stubs issued in 1996, 1997, and 1998. In addition, the applicant also filed applications for re-registration in 2002 and 2003.

The October 14, 2003, application for re-registration, or extension, indicated a new address for the applicant. It is noted, however, that the Notice of Decision dated January 28, 2004, was improperly mailed to the applicant's prior address.

On motion, the applicant submits the following evidence: a change of address card dated September 11, 2003, and reflecting the new address as given on his October 2003 re-registration application; a copy of the decision reflecting that it was mailed to the old address; copies of his prior applications, receipt notices,

money orders, employment authorization cards, fingerprint fee receipt and fingerprint notification; and, some of the other documentation previously listed above.

The applicant may have submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). In addition, the applicant filed his initial TPS application during the initial registration period as required at 8 C.F.R. § 244.2(f)(1).

However, the application may not be approved because the applicant has failed to establish that he is a national of a country designated for TPS benefits. The applicant has failed to submit sufficient evidence of his nationality. Although the record contains a photocopy of a birth certificate with English translation, the applicant has not submitted a passport, and/or a national identity document from his country of origin bearing a photograph and/or fingerprint. While the applicant submitted a birth certificate accompanied by photo identification, evidence in the record calls into question the applicant's nationality.

The record contains a Form I-213, Record of Deportable/Inadmissible Alien, dated May 8, 2000, issued at Dallas, Texas. The record indicates that the applicant was encountered while detained at the Plano City Jail for "traffic violations." At that time, he told immigration officers that he was a citizen of Mexico, and listed his birthplace as Guanajuato, Mexico. The applicant also gave different names for his parents than those that appear on the El Salvadoran birth certificate, and requested voluntary departure to Mexico. The nationality the applicant claimed and/or established at the time he first came into contact with the Service (now CIS) was that of Mexico. Mexico is not a designated foreign state under Section 244 of the Act. The applicant has failed to submit sufficient evidence of his nationality. The applicant, therefore, does not meet the eligibility requirements of being a national of a state designated under section 244(b) of the Act. He has therefore, failed to establish that he has met the requirements at 8 C.F.R. § 244.2(a), and the application must be denied for this reason.

In addition, on the Form I-213, the applicant informed immigration officers that he had entered the United States without inspection on or about October 1, 1999. While this date is prior to February 13, 2001, date of entry required of El Salvadorans applying for TPS, this date does cast some doubt on the documentation dated in the years 1996 through October 1999, submitted by the applicant.

Although the applicant was encountered by immigration officers while detained for "traffic violations," it is noted that the records of CIS reflect that the Federal Bureau of Investigation (FBI) fingerprint results reports processed by the FBI on December 27, 2001, and again on July 21, 2005, reflect that the applicant was not identified as having a criminal or other record as of those dates.

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 dismissed.