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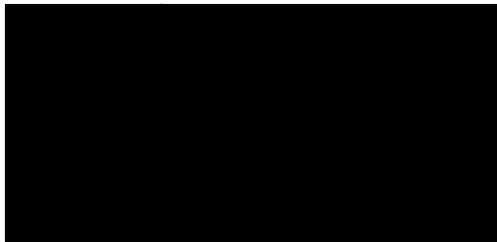
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FILE: [REDACTED]
[SRC 03 232 55403]

Office: TEXAS SERVICE CENTER Date: 07/15/2005

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: 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. Moneys
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 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 because the applicant failed to establish that he was eligible for late registration.

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

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 Citizenship and Immigration Services (CIS), on August 20, 2003.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or

application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for late initial registration. 8 C.F.R. § 244.2(g).

On March 16, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant also was requested to submit certified final court dispositions for criminal charges appearing in his record. The applicant, in response, provided the following documentation:

1. A record check dated April 2, 2004, from the Metropolitan Police Department of Nashville and Davidson County, indicating no police records under the name [REDACTED] and [REDACTED] with dates of birth given as March 11, 1977, and November 20, 1982;
2. A State of Tennessee Misdemeanor Citation dated October 13, 1999, Complaint number [REDACTED] indicating the applicant was driving a car with expired tags and had no license, and an October 13, 1999, guilty plea before the Judge of the Court of General Sessions of Davidson County, Tennessee;
3. A certified General Sessions Disposition dated April 13, 2004, in the name of [REDACTED] for the offense [REDACTED] Weapon-Unlawful Possession Misdemeanor, indicating disposition "Retired;"
4. A certified General Sessions Disposition dated April 13, 2004, in the name of [REDACTED] for the offense [REDACTED] Reckless Driving A Misdemeanor, indicating a guilty plea, suspended sentence and supervised probation for 6 months;
5. A certified General Sessions Disposition dated April 13, 2004, in the name of [REDACTED] for the offense [REDACTED] License - No Driver's License C Misdemeanor, indicating a guilty plea and a fine;
6. A Social Security card in the name [REDACTED] and,
7. An Employment Authorization document (EAD), in the name of [REDACTED], under Category C19, with validity from October 21, 2003 through March 9, 2005.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on April 20, 2004.

On appeal, the applicant states that he did not apply for TPS during the initial registration period because he had pending deportation proceedings in 1999, and he feared he would be deported. In support of the appeal, the applicant resubmits additional copies of documentation relating to his removal proceedings, consisting of:

1. His Detained Alien Identification Card, indicating his arrival on February 11, 1999 [his actual arrival date is indicated as February 5, 1999];
2. A Warrant for Arrest of Alien dated February 5, 1999, and corresponding Notice to Appear in removal proceedings, in the name of [REDACTED] issued at Laredo, Texas, on February 5, 1999;
3. An Order of Release on Recognizance, dated February 19, 1999; and,
4. A Notification of Change of Address, dated February 19, 1999, giving an address in Hermitage, Tennessee.

Although the applicant was under immigration proceedings in the year 1999, prior to the initial registration period for El Salvadorans, the record reflects that the Immigration Judge, New Orleans, Louisiana, on April 12, 1999, ordered the removal proceedings terminated without prejudice. Therefore, the applicant was not under immigration proceedings during the initial registration period and did not submit evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status on this ground will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Some of the documentation is in another name and under another Social Security number; the applicant has not offered an explanation for the use of another name. 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, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c), and the application must also be denied for these reasons.

In addition, it is noted that the Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant was arrested by the Metro Police Department, Nashville, Tennessee, on April 2, 2001, under the alias of [REDACTED] and charged with:

Charge 1: Weapon-Unlawful Possession Citation: [REDACTED] (A);

Charge 2: Driving Reckless Citation: [REDACTED]; and,

Charge 3: License, Driver License Required Citation: [REDACTED]

The Dispositions listed above at numbers 3 through 5 [page 4 above], contain these citation numbers but do not indicate the date of the arrest, and are under the name of [REDACTED] it is, therefore, unclear whether the disposition reports pertain to the charges on the FBI report, or are additional charges. It also is noted that the Tennessee Misdemeanor Citation, listed above at number 2, is dated October 13, 1999, for Complaint number [REDACTED] appears to be an additional charge pertaining to a citation and guilty plea for an arrest on October 13, 1999. The applicant has not conclusively established that he has not been convicted of two or more misdemeanors. These charges must be addressed in any future proceedings.

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.