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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: 12 FEB 2002

IN RE: Applicant: [redacted]

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

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who indicated on his application that he was present in the United States without a lawful admission or parole in August 1997. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts that he has been in the United States since 1997, but he has never kept any receipts or letters. The applicant provides evidence establishing his employment from 1998 through 2000.

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 is eligible for temporary protected status only if such alien establishes that he or she:

(a) is a national of a state designated under § 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 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, or

(2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:

(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 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. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

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. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of 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 since March 9, 2001.

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 the Service. 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).

On May 11, 2001, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document. The applicant, in response, asserted that he could not provide a photo ID because at the time he entered the United States he was too young to obtain an identification card, and he did not have a passport. The applicant stated he came to the United States without any documentation. The applicant provided a copy of an

identity document, in the Spanish language, with a photo attached which the applicant asserted was mailed to him by his mother in El Salvador.

The photo identity document was issued on May 9, 2001. The applicant has not explained how the identity document was issued with his photo when he was supposed to be residing in the United States. If a municipality in El Salvador issues photos ID cards based on birth certificates and phots of adults submitted by mail, such documents are of little probative value in establishing identity. For example, a document issued by a consulate of El Salvador in the United States, issued pursuant to a personal interview, would be a better indication of the applicant's identity and nationality.

Furthermore, the document was submitted without the required English translation. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. 103.2(b)(3).

On appeal, the applicant provides wage and tax statements for 1998 through 2000 along with an undated letter of employment from his employer, Lazy Dog Bar & Grill, in Denver, Colorado. The letter indicates the applicant has been employed since November 1, 2000, and is still with the establishment. However, as the letter was not dated, it cannot be ascertained when it was actually written.

The applicant has not submitted any credible evidence to establish that he has met the criteria as described in 8 C.F.R. 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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. This decision constitutes a final notice of ineligibility.