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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE: [redacted] LIN 02 222 54375 Office: Nebraska Service Center Date: FEB 27 2003

IN RE: Applicant: [redacted]

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

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

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 is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a.

The director determined that the applicant failed to submit evidence to establish that he has continuously resided in the United States since February 13, 2001 and has been continuously physically present in the United States since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant claims that he entered the United States in 1984 and has never left this country since that time. The applicant states that he cannot furnish any more evidence for the period from March 1984 to 1994 because most of it has been lost. The applicant submits additional evidence.

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 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 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 and since February 13, 2001.

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 and since March 9, 2001.

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.

Title 8, Code of Federal Regulations, Part 103(b)(12) states, in pertinent part:

> An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed.

On March 1, 2002, the director requested that the applicant submit additional evidence to confirm his nationality and identity and to establish that he met the requirements of the registration period. The director informed the applicant that the registration period is defined as follows: date of entry since February 13, 2001; date of residency since February 13, 2001 and; date of physical presence since March 9, 2001. The applicant was also informed of the type of documentation that would be acceptable to prove that he met the requirements of the registration period.

On March 19, 2002, the applicant submitted employee earnings statements for the years 1996, 1997, and March 2000. In addition, he submitted a 1998 W-2 Wage and Tax Statement and a copy of a birth certificate for his daughter, [redacted] who was born in the United States on March 29, 2001. The director determined that the applicant had failed to provide clear and conclusive evidence of the date he entered the United States or

that he has continuously resided in the United States since February 13, 2001 and has been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant states he is unable to provide additional evidence for the period March 1984 to 1994, and he submits copies of employment, tax, and insurance records for the period 1993 through 2000. The director did not request evidence for the years 1984 to 2000 because that time period does not pertain to the registration period. The applicant also submitted another copy of his daughter's birth certificate; a copy of a lease agreement dated August 7, 2001; and a copy of a cohabitation agreement which he signed on March 14, 2002. However, the applicant still has not submitted documentation to establish his date of entry into the United States, nor evidence of residence since February 13, 2001 and physical presence since March 9, 2001.

The burden of proof is upon the applicant to establish that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. Applicants shall submit all documentation as required in the instructions or requested by the Service. 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 applicant has failed to meet this burden.

ORDER: The appeal is dismissed.