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U.S. Citizenship
and Immigration
Services

[Redacted]

MI

JUL 06 2004

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

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.

Cuidy N. Gomez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods. The director also noted the discrepancy on various identity documents submitted by the applicant.

On appeal, the applicant asserted that he has been living with his father in whose name the bills are registered, and asserted that his date of birth, in fact, is June 13, 1984.

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 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 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 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on October 30, 2002.

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 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration

period, he was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

On March 28, 2003, 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 was also requested to submit evidence establishing his qualifying residence and physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States. The applicant also provided a revised translation of his birth certificate, indicating he was born in 1984 rather than 1980.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on May 21, 2003.

On appeal, the applicant maintains that he is eligible for late registration as the child of a TPS registrant.

The director's decision noted that the translation of birth certificate contradicts both the information provided on the Form I-821, Application for Temporary Protected Status, and on the initially submitted translation of the birth certificate. On appeal, the applicant did not provide any explanation for the inconsistency. It is noted that the translation of birth certificate submitted on appeal indicates that the applicant was born in 1984 and that his birth was registered with the authorities in 1980, or four years prior to his birth. The number "4" is in different typeface than the remainder of the document. With a birth date of June 13, 1980, it is noted that the applicant would have been a child, under age 21, during the first months of the initial registration period. However, in order to be eligible for late registration as the "child" of a TPS applicant, the applicant would have had to file an application for late registration within 60 days following the termination of his status as a child, or August 13, 2001. 8 C.F.R. § 244.2(g). The application, however, was not filed until October 2002, or 14 months after the applicant would have turned 21 years of age.

It is noted that the submitted birth document in Spanish indicates that the applicant was born on the 13th of the current month, indicated as June 1984. The document further indicates that it was issued by [REDACTED] October 8, 2002. A second document from [REDACTED] Santa Ana, El Salvador, describing the pages of the registry in which the applicant's birth is registered, is dated September 2, 2002. The applicant did not offer an explanation as to how these documents were obtained almost two years after the applicant's stated entry into the United States. The applicant did not submit a copy of his national identity document, cedula, or Salvadoran passport. The applicant has not provided credible evidence that he was born in 1984. 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 inconsistencies.

The applicant has not submitted credible 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 conclusion that the applicant had failed to establish his eligibility for late registration will be affirmed, and the application must be denied.

The second issue in this proceeding is whether the applicant has established 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 applicant submitted the following documentation with his initial application:

1. A photocopy of the Employment Authorization Card, valid June 27, 2001 to September 9, 2002, of [REDACTED] indicating that he received temporary TPS benefits;
2. A photocopy of a birth document with English "Translation of a Birth Certificate;"
3. A document from [REDACTED] dated September 2, 2002;
4. A letter from Father Hennessey, Pastor, Most Holy Redeemer Parish, East Boston, Massachusetts, attesting that the applicant has been a member of the congregation since December 2000;
5. Photocopies of rental receipts dated September 2002, May 2002, [illegible] 2001, and February 2001;
6. Photocopies of Western Union Money Orders, dated October 28, 2002, for the Form I-821 and Form I-765, Application for Employment Authorization; and,
7. A Fact Sheet, "Department of Justice Extension of Temporary Protected Status for Eligible El Salvadorans," dated July 9, 2002, with the eligibility for late registration section highlighted.

As stated above, the applicant was requested on March 28, 2003, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided the following documentation:

1. An altered "Translation of a Birth Certificate;"
2. A photocopy of a MoneyGram receipt dated April 5, 2003;
3. A personal letter from an acquaintance in Boston attesting to the applicant's arrival in the United States in December 2000; and,
4. Resubmitted Nos. 1 and 4 above.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on May 21, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

1. A letter from [REDACTED] stating that the applicant entered the United States in December 2000, and has resided with him and shared some of the utility bills;
2. Letter from a personal reference;
3. A photocopy of a MoneyGram receipt dated May 11, 2003; and,
4. Resubmitted the Employment Authorization card of the father, the rental receipts, the birth document and the altered translation.

On appeal, the applicant has stated that he has been living with his father and all the bills are in his father's name. The letter from Concepcion Quijada states that he gives the applicant a room in his house and shares utility bills with him. This statement is inconsistent with the rental receipts indicating that the applicant paid [REDACTED] for the specified months, at three different addresses. The letters from acquaintances hold little evidentiary value. The letter from the church alone is not sufficient evidence.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also 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.