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U.S. Citizenship
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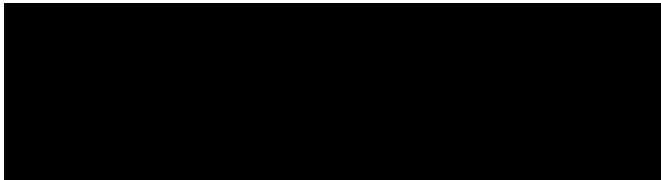
Office: CALIFORNIA SERVICE CENTER

Date:

[WAC 02 170 53548]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 because the applicant was found to be inadmissible to the United States under section 212(a)(6)(c)(i) of the Act and had not filed a Form I-601, Application for Waiver of Grounds of Excludability. The director stated in the Notice of Decision, “[t]he applicant may submit a Form I-601, Application for Waiver of Grounds of Excludability with fee (\$170.00), if the applicant believes he or she is eligible for such waiver.”

On appeal, the applicant acknowledges that he was removed to Mexico on June 21, 2001. He states that he was scared, and had been told that if he was apprehended and asked to identify his nationality, he should say he was Mexican so he would not be sent “all the way back to El Salvador.” The applicant submits a photocopy of the biographic page of his Salvadoran passport.

Pursuant to 8 C.F.R. § 244.3(b), Citizenship and Immigration Services (CIS) may waive inadmissibility under the provisions of section 212(a) of the Act in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest. If an alien is inadmissible on grounds that may be waived, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601, Application for Waiver of Grounds of Excludability.

In this case, the director erroneously denied the application without issuing a notice advising the applicant of the procedure for filing a Form I-601, Application for Waiver of Ground of Inadmissibility, as required. Therefore, the director’s decision will be withdrawn. However, the application may not be approved, for reasons that will be set forth below.

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, 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 § 244.3;
- (e) Is not ineligible under § 244.4; and

- (f) (1) Registers for Temporary Protected Status 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.

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. Subsequent extensions of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with the latest validity granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

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 Citizenship and Immigration Services (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).

CIS record [REDACTED] indicates that the applicant applied for admission to the United States at the Calexico, California, port of entry on June 21, 2001, presenting a Form I-586, Border Crossing Card, in the name [REDACTED]. CIS record [REDACTED]. The applicant was referred for secondary inspection. During his secondary inspection, the applicant admitted in a sworn statement before an officer of the Immigration and Naturalization Service (now Customs and Border Protection) that the Form I-586 he presented for primary inspection did not belong to him. He stated that he purchased the card for \$50.00 from an unknown vendor in Tijuana, Mexico. The applicant told the officer that his true and correct name was [REDACTED] and stated that he was a Mexican citizen and that his parents were also Mexican citizens. The applicant further stated that he was born in [REDACTED] Mexico on January 27, 1979. When asked whether he had ever lived in the United States, the applicant replied, "[n]o."

The applicant was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act and was processed for Expedited Removal under the provision of section 235(b)(1) of the Act. CIS record [REDACTED] contains a Form I-296, Notice of Alien Removed/Departure Verified, indicating that the applicant was removed from the United States via the Calexico port of entry on June 21, 2001. The applicant signed the Form I-265 acknowledging that he had been informed that he was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of his removal from the United States as a consequence of his having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) of the Act.

The applicant claimed to be a Mexican citizen when he attempted to enter the United States on June 21, 2001. The applicant subsequently claimed on the Form I-821, Application for Temporary Protected Status, to be a national of El Salvador. Further, the applicant claimed on the Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection near Mexicali, Mexico, on November 12, 2000. This statement clearly contradicts his previous statement under oath that he had not lived in the United States before his attempted entry at the Calexico port of entry on June 21, 2001. The applicant has not provided an adequate explanation for these discrepancies in his claimed nationality, identity, and date of entry into the United States.

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 visa petition. Further, it is incumbent on 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. (Comm. 1988).

Additionally, since the applicant did not enter the United States until June 21, 2001, he cannot establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the applicant has not provided sufficient credible evidence to establish his identity and nationality pursuant to section 244(c) of the Act, C.F.R. § 244.2(a). The applicant has also failed to submit sufficient credible documentation to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the application must be denied for these reasons.

Finally, as stated previously, it has been determined that the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. Pursuant to 8 C.F.R. § 244.3(b), this ground of inadmissibility may be waived; however, the applicant has failed to establish his identity and nationality and his continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, even if he were to be granted a waiver of this ground of admissibility, he would remain ineligible for TPS.

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.