

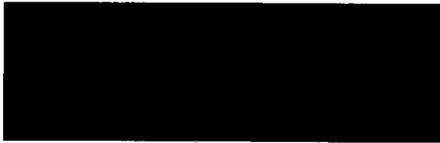
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



M 1

FILE: [REDACTED]
[EAC 03 246 53474]

Office: VERMONT SERVICE CENTER

Date: NOV 03 2005

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:



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 for
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 (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 failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial Form I-821, Application for Temporary Protected Status, with Citizenship and Immigration Services (CIS) on August 30, 2003, more than eleven months after the initial registration period had ended.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

On September 22, 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 continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The record reflects that the applicant failed to respond to the director's request.

The director determined that the applicant had failed to respond to the request for evidence and, therefore, failed to establish his eligibility for late registration, and his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director denied the application on May 18, 2004.

On appeal, counsel for the applicant states that the applicant had, in fact, responded to the director's request on October 14, 2003. The response, however, was sent by counsel on behalf of the applicant, his spouse [REDACTED] and one of their three daughters, [REDACTED]. Apparently, separate documentation for each applicant was not submitted, and was not included in this applicant's file.¹

On appeal, counsel resubmits photocopies of the documentation she states was previously submitted. The documentation submitted reflects that Mr. [REDACTED] was hospitalized on July 19, 2002 for eleven days. One of the couple's other daughters, [REDACTED] was also hospitalized, on February 7, 2003, for about seven days. In an affidavit, dated February 2, 2004, the applicant states that he deeply regrets not having filed his TPS application timely and requests that he be excused due to his family's medical problems.

The first issue to be addressed in this proceeding is whether the applicant has established that he is eligible for late registration.

The only provisions for late registration of an initial TPS application are those described in 8 C.F.R. § 244.2(f)(2). Although the applicant has submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods, this evidence does not mitigate the applicant's failure to establish that he qualifies for late registration. The applicant has not submitted any 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 failed to establish his eligibility for late registration will be affirmed.

The second issue to be addressed is whether the applicant has established his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The record contains the following documentation regarding the applicant's residence and physical presence in the United States:

1. A letter, dated May 17, 2000, from [REDACTED] Clinton, Massachusetts, stating that the applicant had been employed from October 5, 1993 to May 12, 2000;
2. A photocopy of a Certificate of Achievement from the [REDACTED] Valley Regional Vocational School District stating that the applicant completed a course of instruction in Building Construction and Carpentry during the Fall semester of 2000;
3. A photocopy of a loan payment notice, dated May 2, 2001;
4. A photocopy of an automobile insurance statement for the period July 5, 2000 to July 5, 2001; and,
5. Photocopies of medical documentation, dated July 2002.

The applicant claims to have lived in the United States since February 1993. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. No. 1, above, has little evidentiary weight or probative value as it is not in the form of an affidavit and does not provide the address where the applicant resided during the periods of his employment, the exact periods of employment, the periods of

¹ It is noted that the spouse's and child's applications were also denied by the Service Center director.

layoff (if any), and the applicant's specific duties with the company. Furthermore, the dates of the applicant's employment are prior to the dates required to establish qualifying continuous residence and continuous physical presence. Similarly, No. 2 is dated prior to, and Nos. 3 and 5 are dated after, the required dates.

Based on a review of the record, it is concluded that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application on these grounds, as well, will be affirmed.

It is noted that a review of the applicant's file reflects that the applicant was apprehended, on September 18, 1991, upon arrival at the Miami International Airport, attempting to enter the United States from Guatemala with a counterfeit Alien Registration Card (Form I-151 [redacted]) and Social Security card (No. [redacted]) that he claimed to have purchased in Massachusetts during a previous unauthorized stay in the United States from 1988 to 1990. At the time of his apprehension, the applicant was in possession of a Guatemalan passport and provided a sworn statement to CIS officials that he was a native and citizen of Guatemala, born on February 10, 1965, in Retalhuleu, Guatemala, and that both of his parents were Guatemalan. The applicant was determined to be inadmissible to the United States and was returned to Guatemala after having withdrawn his application for admission into the United States.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2(a), provide that an applicant is eligible for temporary protected status only if such alien establishes that he or she:

Is a national of a foreign state designated under section 244(b) of the Act;....

In *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), the United States Court of Appeals stated that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. In *Chevron USA, Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837, 842-843 & n.9 (1984), the district court held that the practice of binding an alien to his claimed nationality "promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his or her country of origin if requested to do so and provides for consistency in the enforcement of law, especially given the large numbers of nonimmigrant foreign nationals who visit the United States each year."

Additionally, the Board of Immigration Appeals, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), concluded that although an alien may hold the phenomenon of dual nationality, an alien may only claim one citizenship at a time for purposes of immigration matters within the United States. As explained in *Ognibene*, clearly, it is not the prerogative or position of the United States to require a dual national alien nonimmigrant to elect to retain one or another of his nationalities. Equally as clear, the national sovereignty of the United States is acceptably and reasonably exercised through section 214 of the Act in holding that a dual national alien nonimmigrant is, for the duration of his temporary stay in the United States, of the nationality which he claimed or established at the time that he entered the United States.

The Board, in *Ognibene*, further held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO Op. 84-22

(July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he enters the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

In this case, the nationality the applicant claimed at the time he first came to the attention of CIS was that of Guatemala. Guatemala is not a designated foreign state under Section 244 of the Act. It was not until August 30, 2003, after the Attorney General had designated El Salvador for TPS, that the applicant claimed to be a national of El Salvador. The fact that the applicant previously disregarded U.S. immigration law by using a counterfeit Federal government identification document, casts doubt on the credibility of his newly claimed nationality. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any 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).

Based on the above discussion, it is concluded that, beyond the decision of the director, the applicant has not established that he is a national of a designated TPS country. Therefore, the application must also be denied for this reason.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.