



U.S. Citizenship
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: **AUG 14 2006**
[WAC 05 225 71632]
[WAC 03 033 53710]

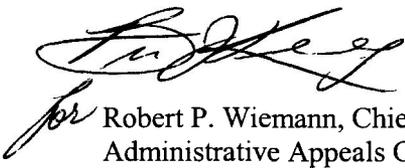
IN RE: Applicant: [REDACTED]

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 record reveals that the applicant filed an initial TPS application on September 11, 2002, under Citizenship and Immigration Services (CIS) receipt number WAC 03 033 53710. The director denied that application on March 8, 2004, after determining that the applicant had abandoned his application based on his failure to appear for fingerprinting on July 16, 2003. On September 2, 2004, the director granted the motion to reopen, filed by the applicant on May 18, 2004 and on June 24, 2004, and the applicant was accorded an opportunity to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director reviewed the evidence furnished by the applicant in response to the director's request of September 2, 2004, and determined that the evidence furnished was insufficient to establish continuous residence and continuous physical presence during the requisite period; therefore, the director denied the initial application on January 11, 2005. On January 26, 2005, the applicant filed an appeal from the denial decision.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on May 13, 2005, and indicated that he was re-registering for TPS. The director denied the re-registration application on August 16, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

On September 21, 2005, the applicant appealed the director's decision to deny the re-registration application. He resubmitted evidence previously furnished and contained in the record of proceeding and was previously addressed by the director as insufficient evidence to establish eligibility for TPS. On December 29, 2005, the director rejected the applicant's appeal because the appeal was untimely filed, and the appeal did not meet the requirements of a motion to reopen or reconsider pursuant to 8 C.F.R. § 103.5(a)(2) and (3).

A review of the record of proceeding, and as addressed above, it is noted that during the pendency of the Notice of Appeal filed on January 26, 2005, the applicant filed the re-registration application on May 13, 2005, the director denied the re-registration application on August 16, 2005, and the director also rejected the applicant's appeal as untimely on December 29, 2005. A remand of this case to the director based on premature denial of the re-registration application would not overcome the director's denial of the initial TPS application, because the record as presently constituted contains insufficient evidence to establish that the applicant has met the criteria for continuous residence and continuous physical presence in the United States during the requisite period.

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 § 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate 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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, 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).

To establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the initial application on September 11, 2001, the applicant submitted:

1. A "Monthly Rental Agreement" dated March 1, 2001, between the applicant and [REDACTED]. The rental agreement, however, is incomplete as it did not list the address or location of the apartment or house the applicant was allegedly renting. Also furnished are copies of two rent receipts, signed by [REDACTED], dated March 1, 2001, and August 2, 2001, for the rent of [REDACTED] Los Angeles, CA 90029. It is noted that other documents contained in the record during that period indicated that the applicant was residing at [REDACTED]. Therefore, these documents cannot be accepted as credible evidence.
2. A "Contribution Statement" dated January 26, 2001, issued by [REDACTED] and made out to the applicant at his address in [REDACTED] in North Hollywood, CA for contribution made in December 2000. It is noted, however, that the name of the contributor was listed as [REDACTED] therefore, this statement cannot be accepted as belonging to the applicant.
3. An undated statement or receipt from "Mo Pasion" (no address given) written in the Spanish language without English translation; and an illegible and incomplete store receipt dated April 12, 2001. The name and address of the store or establishment was partially covered by the receipt from Mo Pasion. Therefore, these documents are not acceptable evidence.
4. A "Work Status" issued by I [REDACTED] on September 12, 2001, indicating that the applicant was "temporarily totally disabled from 9/12/01 until 12/12/01." It is noted, however, that the dates were "white out" and altered to reflect the 2001 dates shown on the document. Therefore, this document cannot be accepted as credible evidence.
5. A copy of an Achievement Award issued under the name of the applicant by the Los Angeles Unified School District Division of Adult and Career Education, [REDACTED] School, for having received 100 hours of instruction in English as a Second Language-Level 2, on February 8, 2001. The authenticity of this certificate is questioned as the handwritten name of the applicant appears darker than the remaining handwritten information contained on the certificate, and no seal from the school was affixed to the certificate. The applicant could have submitted evidence from the adult school to show that he was registered to attend that class.
6. A copy of Form 1099-MISC, Miscellaneous Income Tax, for the year 2001, issued by All Valley Paint & Supply, Reseda, California. This form also is not acceptable since it cannot be determined when in the year 2001 the applicant worked for this company. The applicant could have submitted a letter of employment from this company.

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, in fact, 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 discrepancy in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect. The applicant claimed to have lived in the United States since March 1999. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to submit credible, sufficient evidence to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the initial application will be affirmed.

Beyond the decision of the director, it is noted that the applicant filed his initial TPS application on September 11, 2002, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). Therefore, the application will 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.