



U.S. Citizenship  
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FILE: [Redacted] Office: Nebraska Service Center Date: **DEC 08 2006**  
[LIN 01 192 50689]

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again, by the Director, Nebraska 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 his qualifying residence in the United States during the requisite time periods.

On appeal, counsel asserts the applicant's claim of eligibility and submits documentation in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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.

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. 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 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).

Along with his application for TPS, the applicant submitted the following documentation:

- 1) A copy of his El Salvadoran birth certificate along with an English translation, and;
- 2) A copy of an earnings statement dated April 10, 1998, which does not bear a name.

On July 17, 2001, the applicant was requested to submit a copy of his current photo identification. The applicant was also requested to submit evidence establishing 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 director determined that the record did not contain a response from the applicant; therefore, the director denied the application on December 5, 2001, due to abandonment.

On January 8, 2003, the director requested the applicant to submit a copy of his current photo identification. The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant the following documentation:

- 3) A copy of an El Salvadoran passport bearing the name of [REDACTED] born on April 8, 1979.
- 4) A copy of a letter dated November 12, 2001, in Spanish, from [REDACTED] Manager. It is noted that the letter is not signed nor does it contain any address.
- 5) A copy of an invoice dated October 7, 2001, from American Family Insurance.
- 6) Copies of three earnings statements from Columbia Sussex Corporation dated January 10, 2003, May 31, 2002, and October 5, 2001.
- 7) A copy of the applicant's Minnesota Identification card.

The director determined that the applicant failed to establish his qualifying residence in the United States during the requisite time period and denied the application on March 12, 2003.

On appeal, counsel provides the following documentation in support of the applicant's eligibility for TPS:

- 8) Copies of a Resident Alien card (Form I-551) bearing the name of [REDACTED]
- 9) A copy of a Social Security card bearing the name of [REDACTED]
- 10) A copy of an Employment Authorization card bearing the name [REDACTED] date of birth is December 26, 1983.
- 11) A copy of a Minnesota Identification card bearing the name [REDACTED] with a date of birth of December 26, 1983.
- 12) An employment letter from [REDACTED] President of [REDACTED] Incorporated in Minneapolis, Minnesota, who stated that [REDACTED] held a position with his company from November 6, 2000 to April 2001.
- 13) Copies of earnings statements from [REDACTED] reflecting pay periods from November 6, 2000 to November 19, 2000 and January 29, 2001 to February 11, 2001. It is noted that these earnings statements do not bear any names, addresses, or any other identifying information, such as Social Security Number.
- 14) A copy of an employment letter dated April 3, 2003, from [REDACTED] Human Resource Generalist for ABM Janitorial, who stated that [REDACTED] has been an employee from April 12, 2001 [REDACTED]
- 15) A copy of an employee record from ABM Janitorial bearing the name of [REDACTED]
- 16) A copy of an earnings statement dated November 3, 2001, from ABM Janitorial Services [REDACTED]
- 17) Copies of two earnings statements from T-H Continental Limited Partnership bearing check payment dates of May 18, 2001 and May 25, 2001. It is noted that the name on these earnings statements are not clear and the Social Security Number [REDACTED]
- 18) Two copies of earnings statements from MPLSP Hotel Corporation with check payment dates of June 14, 2002 and June 28, 2002, bearing the name of [REDACTED] (SSN [REDACTED])
- 19) A copy of an earnings statement from Prime Hospitality Corporation indicating a pay date of April 25, 2002 [REDACTED]

- 20) Copies of two receipts dated September 4, 2002, from Cash-A-Check and the United States Postal Service.
- 21) Copies of the biographical pages of an El Salvadoran passport bearing the name [REDACTED] born on December 26, 1983.
- 22) A copy of a personal identification card along with an English translation bearing the name [REDACTED] born on December 26, 1983.

A review of the record of proceedings reflects that the applicant submitted copies of his El Salvadoran birth certificate along with an English translation bearing the name of [REDACTED]. On appeal, counsel states that the applicant used a Form I-551 (Alien Registration document) and Social Security card under the name of [REDACTED] as detailed in Nos. 8 and 9 above, in order to work in the United States. In addition, counsel provides copies of an Employment Authorization document, Minnesota Identification card and passport bearing the name of [REDACTED] born on December 26, 1983, as detailed in Nos. 10, 11, and 12. However, counsel, has failed to provide any credible evidence to establish the use of the applicant's claimed name of [REDACTED] or [REDACTED]. Evidence of the use of two names may include official court documents registered with the proper civil authorities. As such, only evidence bearing the name of [REDACTED] born on April 4, 1979, will be considered in these proceedings.

The record of proceedings contains two earnings statement bearing the name of [REDACTED], as detailed in Nos. 18 and 19 above. However, the dates on these documents post-date the beginning of the requisite time period for continuous residence in the United States by over one year. It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence requirements described in 8 C.F.R. §§ 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. 8 C.F.R. § 244.2(b). Therefore, the application will also be denied for these reasons.

In addition, Section 212(a)(6)(C), provides:

(C) Misrepresentation.-

(i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

(ii) FALSELY CLAIMING CITIZENSHIP-

(I) IN GENERAL- Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act (including section 274A) or any other Federal or State law is inadmissible.

(II) EXCEPTION- In the case of an alien making a representation described in subclause (I), if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making such representation that he or she was a citizen, the alien shall not be considered to be inadmissible under any provision of this subsection based on such representation.

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (I).

According to the record, the applicant is inadmissible under section 212(a)(6)(c) of the Act due to his misrepresentation. Although a waiver may be authorized, no Form I-601, Application for Waiver of Grounds of Excludability, has been submitted by the applicant, and adjudicated by the CIS. Therefore, the grounds for denial are affirmed, and the applicant remains ineligible for TPS.

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 TPS 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.