U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

JUL 25 2006

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE:
[EAC 04 055 53670]

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:

[redacted]

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, 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 had failed to respond to a request to submit evidence to establish that he: (1) was eligible for late registration; (2) is a citizen or national of El Salvador; (3) had continuously resided in the United States since February 13, 2001; and (4) had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence.

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, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his application on November 6, 2003.

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).

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

The record of proceeding 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 from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

A review of the record indicates that the applicant filed a TPS application during the initial registration period, on March 8, 2002, under CIS receipt number EAC 02 137 51120. The director denied that application based on abandonment on April 17, 2003, because the applicant had failed to respond to a request dated August 7, 2002, 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. On May 7, 2003, the applicant filed a motion to reopen his case. The director dismissed the motion on August 20, 2003, because the motion was not accompanied with evidence that the director's decision was in error, pursuant to 8 C.F.R. § 103.5(a)(2). On

October 10, 2003, counsel filed a motion to reopen the applicant's case. The director dismissed the motion on April 27, 2004, because the motion was not submitted within the required 33 days, and the delay in filing had not been found to be reasonable and beyond the control of the applicant or counsel.

The applicant filed the current TPS application on November 6, 2003. In a notice of intent to deny dated March 24, 2004, the applicant was requested to submit evidence to establish that he: (1) was eligible for late registration; (2) is a citizen or national of El Salvador; (3) had continuously resided in the United States since February 13, 2001; and (4) had been continuously physically present from March 9, 2001, to the date of filing the application. The applicant failed to respond; therefore, the director denied the application on July 13, 2004.

On appeal, the applicant asserts that he did respond to the director's request for additional evidence. He explains that he received two letters on the same day requesting the same information, and that the only difference with the two letters was the file receipt numbers; therefore, he responded to only one letter. The applicant submits copies of the documents he previously provided in an attempt to establish residence and physical presence in the United States. He also submits: (1) a copy of a letter dated April 21, 2004, from his father, requesting that his son (the applicant) be included as a late registrant under his TPS application; (2) a copy of the applicant's birth certificate; (3) a copy of Form I-797C, Notice of Action, dated July 25, 2001, advising that he was granted TPS; and (4) a copy of Employment Authorization Card with "Category A12."

The record indicates that the applicant was born on August 4, 1983. He was 20 years of age at the time he filed the TPS application on November 6, 2003; therefore, the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2)(iv) as the child of an alien granted TPS, and he was eligible to apply for late registration.

The applicant has, therefore, overcome this ground for denial.

The second issue in this proceeding is whether the applicant has established his citizenship and nationality.

The applicant was requested on March 24, 2004, to submit evidence to show that he is a citizen or national of El Salvador. The applicant failed to respond; therefore, the director denied the application on July 13, 2004. On appeal, the applicant submits a copy of an El Salvadoran passport issued to the applicant at Washington, DC, on February 25, 2002.

The applicant has also overcome this ground for denial.

The third issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing the TPS application.

As stated above, the applicant was requested on March 24, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. Because the applicant failed to respond to the request, the director denied the application on July 13, 2004. On appeal, the applicant submitted copies of the following documents previously furnished and contained in the record of proceeding:

1. receipts dated August 29, 2000 and December 12, 2000.

2. A statement dated April 18, 2004, General Manager Arlington, Virginia, indicating that the applicant has been working since February 2001. Also

contained in the record is a copy of Form W-2, Wage and Tax Statement, reflecting that the applicant received $5,786.09 in wages the year 2002.

3. Earnings statements from The dated July 20, 2001 and August 3, 2001. Also contained in the record is a copy of Form W-2 for earnings received during these two periods in 2001.

4. Earnings statements from Community Landscape Services dated August 21, 2001; September 21, 2001; October 5, 2001; October 19, 2001; November 2, 2001; November 16, 2001; December 14, 2001; September 20, 2002; October 4, 2002; October 18, 2002; November 15, 2002, and November 29, 2002.

5. Included in the record are two copies of Forms W-2; the first indicating that the applicant received $5185.03 for wages received in 2002 from under Social Security Number (SSN) and the second indicating that the applicant received $7324.64 for wages received in 2002 from under

6. Also included in the record is a copy of an earnings statement from Inc. dated March 20, 2003, under

(No. 2 above) indicated that the applicant has been working since February 2001," insufficient evidence was furnished to support this claim. The applicant submitted a copy of Form W-2 to show that he worked for this company only since the year 2002. Furthermore, letter failed to provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form and attested to by the employer under penalty of perjury, it did not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the periods(s) of layoff, if any.

The applicant indicated on his initial TPS application (filed on March 8, 2002) that the date of his entry into the United States was "Nov 2000." However, the applicant submitted a receipt that was dated August 29, 2000 (No. 1 above) prior to the date of his claimed entry. Therefore, the documents (No. 1 above) furnished to show residence in the United States prior to February 13, 2001, cannot be considered as credible. Additionally, the applicant had not explained the discrepancies between the two W-2 forms from INC (detailed in No. 5 above). It is also noted that the applicant's name and address on the earnings statement from Control Building Services, Inc. (No 6 above) was typed in a different font than that of the surrounding text. Accordingly, Nos. 5 and 6 above also cannot be considered as credible.

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 discrepancies in the evidence he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant has not submitted credible evidence to establish continuous residence and continuous physical presence in the United States since February 13, 2001 to July 2001, and from November 2002 to the date he filed his application on November 6, 2003.

Accordingly, the applicant has failed to establish that he has met the criteria for continuous residence in the United States 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 TPS application will be denied on this ground.

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.