



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 04 015 51227]

Office: VERMONT SERVICE CENTER

Date: MAY 03 2006

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.

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 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 continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

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

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application, with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The record reveals that the applicant did file an initial application for TPS during the initial registration period. That application was denied on July 18, 2002, for failure to respond to a request for evidence to establish his eligibility for TPS. Since the application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe.

The applicant filed a subsequent Form I-821, Application for Temporary Protected Status, on September 11, 2003. The director denied this second application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

The applicant's initial Form I-821 was properly filed on April 25, 2001. That initial application was denied by the director on July 18, 2002. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

The applicant filed a subsequent Form I-821 on September 11, 2003. Since the initial application was denied on July 18, 2002, the subsequent application cannot be considered as a re-registration. Therefore, this application can only be considered as a late registration. The director stated in the denial decision dated August 19, 2004, that the applicant qualifies for late initial registration.

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. 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 granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his initial TPS application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on September 11, 2003.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States without inspection on November 12, 1998. In support of his application, the applicant submitted the following:

1. photocopies of report cards from Roosevelt High School in Roosevelt, New York, for the quarters ending November 8, 1999 and March 31, 2000;
2. a photocopy of a student photo identification card from Roosevelt High School for the 1999-2000 school year;
3. a photocopy of a money order receipt dated March 1, 2000;
5. a photocopy of a letter from Dime Bank dated January 25, 2002;
6. a photocopy of a monthly savings account statement from Dime Bank for the period from February 8, 2002 through March 7, 2002;
7. photocopies of monthly savings account statements from Washington Mutual Bank for the periods from November 9, 2002 through December 9, 2002; April 9, 2003 through May 8, 2003; and, June 10, 2003 through July 9, 2003;

8. a letter from [REDACTED] of Iglesia Apostoles & Profetas Ephesios 2:20 in Hempstead New York, stating that the applicant has been an active member of his church since November 20, 1998;
9. an affidavit from [REDACTED] a member of Iglesia Apostoles & Profetas Ephesios 2:20 in Hempstead, New York, stating that she has known the applicant since January 1999, and that the applicant has been actively involved as a leader of the Youth Committee in her church;
10. an affidavit dated August 4, 2003, from [REDACTED] stating that she has known the applicant since December 31, 1998, and that she first met him at Iglesia Apostoles & Profetas Ephesios 2:20;
11. an affidavit dated July 29, 2002, from [REDACTED] stating that he has known the applicant since December 2000;
12. an affidavit dated February 5, 2003, from [REDACTED] stating he has known the applicant since November 8, 1998;
13. an affidavit dated July 28, 2003, from [REDACTED] stating that she has known the applicant since December 2000; and,
14. a letter dated September 17, 1999, from [REDACTED] a Nurse at Roosevelt High School stating that the applicant was attending her school as of the date of the letter.

On March 10, 2004, the applicant was requested to submit evidence establishing his eligibility for late initial registration and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The applicant, in response, submitted the following evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods:

15. a letter dated March 26, 2004, from [REDACTED] a Mathematics teacher at Roosevelt High School, stating that the applicant was a student in her Mathematics class in the 1999-2000 school year and she found him to be an independent and hard-working young man;
16. a record from Roosevelt Union Free School District indicating that the applicant last attended Roosevelt High School on May 25, 2000;
17. an affidavit dated March 25, 2004, from [REDACTED] stating that he has known the applicant since December 1998;
18. an affidavit dated March 26, 2004, from [REDACTED] stating that he has known the applicant since December 31, 1998;

19. an affidavit dated March 26, 2004, from [REDACTED] stating that she has known the applicant since 1998;
20. an affidavit from [REDACTED] that he has known the applicant since January 1999;
21. an affidavit dated March 26, 2004, from [REDACTED] stating that she has personal knowledge that the applicant has been active member of Iglesia Apostoles y Profetas Ephesios 2:20;
22. an affidavit dated March 29, 2004, from [REDACTED] stating that she has known the applicant since December 1998;
23. an affidavit dated March 29, 2004 from [REDACTED] stating that he met the applicant on December 15, 1998 through work; and,
24. a photocopy of a photo membership card from the Evangelical Church Apostles and Prophets in Hempstead, New York, issued in October 2000.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application on August 19, 2004.

On appeal, counsel for the applicant states that the applicant has submitted affidavits from officials and other members of his church attesting to his continuous residence and continuous physical presence in the United States during the requisite periods. Counsel submits the following:

25. a letter dated August 26, 2004, from [REDACTED] of the Iglesia Apostoles Y Profetas Ephesios 2:20 stating that the applicant has been a member of his church since November 20, 1998;
26. an affidavit dated August 26, 2004, from [REDACTED] stating that she has known the applicant since February 2, 2001;
27. an affidavit dated August 25, 2004, from [REDACTED] stating she has known the applicant since January 5, 2001;
28. an affidavit dated August 20, 2004, from [REDACTED] stating that the applicant is her nephew and that he has been residing continuously in the United States since before January 1, 2001;
29. photocopies of Urgente Express mailing envelopes postmarked July 11, 2000 and February 26, 2001; and,

30. an affidavit dated August 26, 2004, from [REDACTED] stating that she has known the applicant since January 2001.

The applicant's records and documents from Roosevelt High School (No. 1, 2, 3, 14, 15, and 16 above), the Traveler's Express money order receipt (No. 4 above), the Urgente Express mailing envelope postmarked July 11, 2000 (No. 29 above), and the membership card from Iglesia Apostoles Y Profetas Efesios 2:22 (No. 24) are all dated prior to the requisite dates to establish continuous residence and continuous physical presence in the United States.

Without corroborative evidence, the letters and affidavits from individuals who are acquainted with the applicant through his church (No. 9, 10, 11, 12, 13, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, and 30 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence. Moreover, affidavits are only specifically listed as acceptable evidence of employment and membership in organizations such as churches or labor unions as described at 8 C.F.R. § 244.9(a)(2)(i) and (v). The affidavit from Pastor Ferrufino has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v) because it is not in affidavit format.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States throughout the requisite periods. He has, therefore, failed to submit sufficient evidence to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is noted that the applicant arrived in the United States at Dulles International Airport, Washington, D.C., on November 8, 1998, via United Airlines Flight #860. The applicant claimed to be a Guatemalan citizen and presented a Guatemalan passport in the name [REDACTED] bearing a United States B-1/B-2 visitor's visa issued in Guatemala City, Guatemala, on November 15, 1993. The applicant admitted that both the passport and visa had been altered, and that he was not the true bearer of the passport. The alterations to the passport were verified by forensic examination.

The applicant told the Immigration Inspectors that his true name was [REDACTED] and that his relatives had purchased the passport for him from a man in New York for \$4,000 and sent the document to him in El Salvador. The applicant, who was a 15-year-old minor at that time, was placed in removal proceedings and released to join his mother, Maria Fernandez-Saravia, in New York.

On June 6, 2000, an Immigration Judge in New York, New York, ordered the applicant removed to El Salvador in absentia when he failed to appear for his removal hearing. Counsel for the applicant filed an appeal from the Immigration Judge's order with the Board of Immigration Appeals (BIA) on September 13, 2000. On May 10, 2002, the BIA rejected the appeal as untimely filed. There is no indication in the record that a Form I-205, Warrant of Removal/Deportation, has been issued in this case.

The applicant's initial claim to Guatemalan citizen contradicts his current claim on his TPS application to be a Salvadoran citizen. The applicant has submitted a photocopy of a Salvadoran birth certificate with English translation, but he has not submitted an official Salvadoran photo identification document to corroborate his claim to Salvadoran citizenship. Therefore, the applicant has not established his identity and nationality as described at 8 C.F.R. 244.9(a)(1), and the application also must 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.