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

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FILE:



OFFICE: California Service Center

DATE:

DEC 04 2007

[WAC 05 012 51787]

IN RE:

Applicant:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center (CSC). It is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 on the grounds that the applicant failed to submit requested evidence to establish his eligibility for late registration and his continuous residence in the United States since February 13, 2001.

On appeal the applicant submits additional documentation and asks that his case be reviewed.

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 TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 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.

El Salvadoran nationals applying for TPS offered must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial Form I-821, Application for Temporary Protected Status, on October 13, 2004.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he met at least one of the conditions 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 Citizenship and Immigration Services (CIS). *See* 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. *See* 8 C.F.R. § 244.9(b).

On December 2, 2004, the CSC issued a notice of intent to deny (NOID) in which the applicant – who claims to have entered the United States without inspection in January 2000 – to submit evidence that he met the requirements for late registration and had resided in the United States continuously since February 13, 2001. When the applicant failed to respond to the NOID within the requested one-month period, the director denied the application on January 28, 2005.

The applicant filed a timely appeal, and submitted some evidence of his residence and physical presence in the United States, consisting of a rental application dated January 3, 2001; a medical appointment scheduled for February 3, 2001, and a payment receipt dated January 1, 2001. Prior to the appeal the applicant had also submitted some documentation in a late response to the NOID, including photocopies of an immunization record in the applicant's name with entries dating from July 2001 to September 2003, earnings statements (Form W-2) and federal income tax returns of his father for the years 2000 and 2001, and three documents from Hawthorne High School, two from the 2003-2004 academic year and the other undated.

CIS records confirm that the applicant's father, [REDACTED] filed an application for TPS on April 23, 2001, during the initial registration period for El Salvadoran nationals, which was approved on January 31, 2003. Subsequent applications for re-registration have likewise been approved. Thus, the applicant qualifies for late initial registration under 8 C.F.R. § 244.2(f)(2)(iv) as the child of a TPS-eligible alien during the initial registration period. Accordingly, the applicant has overcome the late registration ground for denial. That part of the director's decision will therefore be withdrawn.

The evidence of record, however, does not establish that the applicant satisfies the continuous physical presence and continuous residence requirements set forth in 8 C.F.R. § 244.2(b) and (c). With respect to the three pieces of documentation submitted on appeal, there are no official stamps or other official markings to confirm the dates and authenticity of any of the documents. Furthermore, the dates on these documents, as well the earlier entry dates in the immunization record submitted in response to the NOID, conflict with other evidence in the record. Though the applicant claims to have entered the United States in January 2000, this claim is contradicted by the information provided by the applicant's father in his initial TPS application, filed in April 2001, which indicated that his wife and all three of his sons resided in El Salvador. Not until his first re-registration application, filed in October 2002, did the applicant's father state that his wife and children resided with him in Inglewood, California. In addition, the file of the applicant's father includes a certification by a doctor in La Union, El Salvador, dated November 27, 2001, that the applicant had been admitted to his clinic for surgery at that time.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies without competent evidence pointing to where the truth lies will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). The applicant has not resolved the foregoing inconsistencies in the record. Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. *See id.*

Based on the foregoing analysis, the AAO determines that the applicant has failed to establish his continuous residence in the United States since February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(c). Nor has the applicant established his continuous physical presence in the United States from March 9, 2001, until the date he filed for TPS (October 13, 2004), as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b). Accordingly, the director's denial of the application will be affirmed on these grounds.

The application for TPS will be denied for the above stated reasons, with each considered as an equal 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 that burden.

ORDER: The appeal is dismissed.