



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: JUN 27 2007
[WAC 01 165 50528]
[REDACTED]

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, 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 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 submit evidence to establish his identity and nationality.

On appeal, counsel claims that the applicant is eligible for TPS.

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.

- (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 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 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).

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or

- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On August 30, 2005, the applicant was requested to submit evidence to show that he is a citizen or national of El Salvador. In response to the director's request for evidence, the applicant submitted a photo copy of an El Salvadoran birth certificate with English translations, a photo copy of part of a provisional passport from the El Salvadorian Consulate in Santa Ana, California, and a photo copy of the applicant's Minnesota driver's license.

The director denied the TPS application on February 1, 2006, because the applicant had failed to submit evidence of his identity and nationality. The director noted that the birth certificate and passport sent by the applicant was sent to the Forensic Document Laboratory (FDL) to be examined for authenticity, and that the FDL was unable to conclusively authenticate the documents. The director also noted that the applicant had been previously encountered by border patrol on September 10, 1995, near San Ysidro, California, at which time he stated that he was a native and citizen of Guatemala. The record also shows that the applicant was ordered removed from the United States in absentia to Guatemala on November 13, 1995.

On appeal, counsel states that the applicant is eligible for TPS as an El Salvadoran citizen, and that the applicant was ill advised in 1995 to state that he was a native of Guatemala. Counsel also requests 60 days in which to provide a legal brief. To date, there has been no brief or evidence submitted by counsel.

The applicant submitted a copy of an El Salvadoran passport issued to him in the United States and an El Salvadoran birth certificate with English translations. However, the record of proceeding shows that the applicant, known as [REDACTED], was apprehended by members of the USINS border patrol on September 10, 1995, near San Ysidro, California, having illegally entered the country.

The record of proceedings shows that the applicant was detained, and fingerprints and a photograph were taken of him and made part of the record. It is further noted that when questioned by border patrol officers, the applicant stated that he was a citizen and national of Guatemala and that his home address was [REDACTED], CD Guatemala, Guatemala. The applicant further stated that he left Guatemala on April 22, 1994, and entered Mexico legally with his Guatemalan passport on that same date. The applicant admitted to living near Mexico D.F., Mexico for one year, and stated that he left his passport in Mexico. The applicant also stated that his mother and father were nationals and citizens of Guatemala. Further, the applicant stated that he was married to [REDACTED] who also resided in CD Guatemala, Guatemala. It is also noted that the applicant stated that he attended the Escuela Federal school in CD Guatemala, Guatemala, from 1984 to 1990, and that he was a life-long member of Iglesia Parrioca Catolica, CD Guatemala, Guatemala. Consequently, the director's conclusion that the applicant had failed to establish that he was a citizen or national of El Salvador will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The record of proceeding shows that the applicant is Guatemalan rather than El Salvadoran; and therefore, cannot establish continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. §§ 244.2(b) and (c).

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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.