

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

MI

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: **MAR 30 2007**

- consolidated herein]

[EAC 03 075 51643]

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DISCUSSION: Approval of the application was withdrawn by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal.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 withdrew approval of the applicant's TPS after determining that the applicant had failed to remain continuously physically present and continuously physically present in the United States during the requisite time periods. The director also determined that the applicant had failed to submit evidence required concerning his criminal history.

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

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.

- (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.

The phrase *brief, casual, and innocent absence*, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Section 244(c)(3) of the Act, and the related regulations in 8 C.F.R. § 244.14, provide that the director may withdraw the status of an alien granted TPS at any time upon the occurrence of any of the following:

- (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
- (2) The alien has not remained continuously present in the United States from the date the alien was first granted TPS;
- (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of TPS.

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 applicant filed his Form I-821, Application for Temporary Protected Status, on January 8, 2003. At the time of filing his application, the applicant indicated his date of entry into the United States as May 1997. That application was approved on May 1, 2003.

As a result of being fingerprinted in connection with an application for annual re-registration or renewal of temporary treatment benefits, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested and charged with possession of marijuana on May 30, 2003, in Washington, D.C., under the name of [REDACTED]. Furthermore, during a review of CIS records, it was discovered that the applicant was apprehended entering the United States without inspection at or near [REDACTED] on April 20, 2002.

On August 31, 2005, the applicant was notified that approval of his application would be withdrawn based upon receipt of the above-noted information. In response to the notice to withdraw, the applicant, through counsel, submitted a document from the Metropolitan Police Department, Washington, D.C., indicating that there was no record on a name file search for [REDACTED].

The director withdrew approval of the application on November 4, 2005, noting that the "no record result" was under a different name from the applicant's. The director also noted that the applicant had been issued a passport in El Salvador on April 3, 2002.

On appeal, counsel submits a document from the Metropolitan Police Department, Washington, D.C., dated November 28, 2005, indicating that there was no record on a name file search for [REDACTED] and a document indicating that the applicant was found guilty of driving while intoxicated on October 17, 2000, in Prince William County, Virginia.

On appeal, counsel asserts that the applicant entered the United States in May 1997, and submits documentation relating to the applicant's presence in the United States from on or about October 3, 1998, through October 16, 2000, and on June 17, 2001. Counsel asserts that the applicant's family in El Salvador obtained his passport for him, and that the applicant was apprehended in Lordsburg, New Mexico, not crossing the border from Mexico to the United States. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

There are discrepancies encountered in the evidence provided. The applicant claims to have continuously resided in the United States since February 13, 2001, and to have been continuously physically present since March 9, 2001. However, no documentation has been submitted for the time periods from late October 2000 through mid-June 2001, or from late June 2001, through April 23, 2002. Furthermore, the applicant's passport contains his photograph, signature, and fingerprint. While it is credible that the applicant could have mailed his photograph with his passport application, and signed the passport after its issuance, no explanation has been provided as to how the passport could be obtained the passport without the applicant's having been physically present in El Salvador to provide his fingerprint. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency

of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

Furthermore, CIS records reflect that the applicant was apprehended by U.S. Border Patrol Agents from Douglas, Arizona, at or near Lordsburg, New Mexico, on April 23, 2002. The applicant was apprehended with a group of 30 other people and at first claimed to be from Mexico. He then recanted and stated that he was from El Salvador and had left El Salvador on April 1, 2002. He entered and passed through Mexico illegally, and arrived in Agua Prieta, Mexico (south of the border near Douglas, Arizona) on April 20, 2002. He then entered the United States without inspection on April 20, 2002, and met with others north of Douglas, Arizona. The group walked for about a day and a half before being apprehended by the U.S. Border Patrol. A notice to appear was issued to the applicant based on his entry without inspection on April 23, 2002. On May 6, 2002, an Immigration Judge released the applicant upon the posting of a \$6,500 bond. On July 8, 2002, the applicant admitted to the charges contained in the notice to appear. On December 18, 2002, an Immigration Judge granted the applicant voluntary departure from the United States on or before April 17, 2003, in lieu of deportation. That order remains outstanding.

Based on the documentation contained in the record, the applicant has failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to withdraw the applicant's TPS approval will be affirmed.

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.