



U.S. Citizenship
and Immigration
Services

ML

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

[REDACTED]

FILE: [REDACTED]
[EAC 07 010 71547]

Office: Vermont Service Center

Date: NOV 05 2007

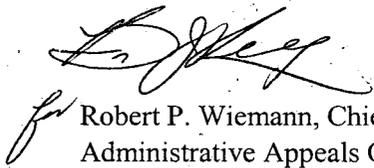
IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.


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 (AAO) on appeal. The appeal will be dismissed.

The applicant is stated to be 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 record reveals that the applicant filed a late initial TPS application on October 10, 2006, under CIS receipt number EAC 07 010 71547. The director denied the application on April 20, 2007, because the applicant failed to submit evidence to establish his continuous residence and his continuous physical presence in the United States, and failed to establish his nationality and identity.

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 as 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 section 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 conditions described in paragraph (f)(2) of this section.

Continuously physically present 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.

Continuously resided 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.

Brief, casual, and innocent absence 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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his TPS application with Citizenship and Immigration Services (CIS) on October 10, 2006.

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).

To qualify for late registration, the applicant must provide evidence that during the initial registration period, he or she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and he or she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

With his TPS application, the applicant submitted his El Salvador birth certificate, with an English translation; and, a photocopy of an Employment Authorization Card for his father, [REDACTED]

On appeal, the applicant asserts that he is eligible for late initial registration for TPS because he is a minor child of a TPS registrant. With his appeal, the applicant submits photocopies of:-

1. Five pay stubs, from [REDACTED] issued to the applicant, dated in 2001 and in 2002;
2. Two Wage and Tax Statements – Forms W-2, for years 2005 and 2006;
3. Five pages, including the biographic page of his El Salvador passport;
4. A letter from Rev. [REDACTED] a, Pastor, dated March 15, 2007, stating that the applicant has been a member of the parish since 2001; and,
5. An Employment Authorization Card for his father, [REDACTED]

CIS records reflect that the initial TPS application for [REDACTED], the applicant's parent, filed on September 6, 2002, was approved as of August 11, 2004, and he is an approved TPS registrant. Therefore, the applicant has established that he has met one of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). In addition, the applicant has established his nationality and identity as he has submitted a photocopy of his El Salvador passport, including the biographic page. However, while an applicant who is the spouse or child of a TPS recipient may be eligible for late initial registration, the applicant must meet all of the requirements for TPS.

The applicant has not submitted sufficient evidence to establish his continuous residence and his continuous physical presence in the United States. It is noted that although the applicant claims that he entered the United States on December 1, 2000, a review of the TPS files for [REDACTED], indicates that on his TPS application filed on September 6, 2002, he listed the applicant as residing in El Salvador. In addition, the applicant submitted questionable pay stubs. The pay stubs, for example, show a different Social Security number from the Social Security number on the applicant's W-2, for years 2005, and 2006. These discrepancies call into question whether the applicant's claimed entry date into the United States is true, and whether the applicant has been in the United States since December 2000, as he claims. It is the applicant's responsibility to address discrepancies in his statements. 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 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 entry dates in the record, and his supporting documentation. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish his continuous residence and continuous physical presence in the United States during the requisite period as required under 8 C.F.R. §§ 244.2(b) and (c).

Consequently, the director's conclusion that the applicant has not met the continuous residence and the continuous physical presence criteria for TPS is 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.