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U.S. Citizenship
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FILE:

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Office: CALIFORNIA SERVICE CENTER

Date:

NOV 06 2007

[WAC 01 170 50385]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

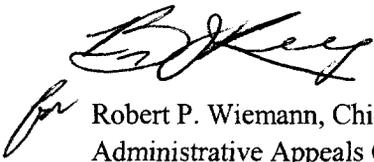
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted, and the appeal will be sustained and the application will be approved.

The applicant is 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 record of proceedings shows that the applicant filed his initial TPS application on April 2, 2001. The director sent the applicant a Notice of Intent to Deny on June 8, 2004, requesting that he submit evidence to establish his nationality or citizenship, and to submit final court dispositions stemming from his criminal arrests. The applicant failed to respond to the director's request for evidence. The director subsequently denied the application on January 14, 2005.

The applicant submitted an appeal from the director's decision on February 2, 2005. The appeal was dismissed on June 27, 2006, after the Director of the AAO also concluded that the applicant had failed to establish his citizenship and nationality. The Director further concluded that the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The Director noted that the applicant had submitted sufficient evidence to establish that he was not ineligible for TPS because he had only been convicted of one misdemeanor.

On motion to reopen, counsel asserts the applicant's claim of eligibility for TPS, and submits evidence in an attempt to establish the applicant's citizenship and nationality, and continuous residence and continuous physical presence in the United States.

A motion to reopen must state the new facts to be proved at the reopened proceeding, and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2).

A motion to reconsider must state the reason for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy ... [and] must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

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 designated by the Attorney General 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 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 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.

The record of proceedings shows that the Director, California Service Center, requested the applicant submit evidence of his nationality or citizenship. The applicant failed to respond to the director's request.

The director determined that the applicant had failed to establish his citizenship and nationality and denied the TPS application on January 14, 2005. The director noted that although the applicant submitted identity documents from El Salvador, they were not accompanied by English translations. The applicant filed an appeal, which the Director, AAO, dismissed on the same grounds.

On motion, the applicant submits copies of his birth certificate with a stamp or seal and with English translations, his El Salvadoran passport, and his El Salvadoran taxpayer's card and cedula with English translations as evidence, and reasserts his claim of eligibility for TPS.

There has been sufficient evidence submitted to establish the applicant's national identity or citizenship. 8 C.F.R. § 244.2(a)(1). Consequently, the director's decision will be withdrawn with respect to this issue.

On appeal, the Director, AAO, determined that the applicant had failed to submit sufficient evidence to establish his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States.

The record of proceedings contains copies of the applicant's New York State Learner Permit and Driver License, 2001 criminal arrest records, January 2001 passenger ticket and baggage check, employment identification cards, certificates of completion, pay stubs, and earning statements, all dated during the requisite time periods noted above.

The applicant has submitted sufficient evidence to establish his qualifying 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). Consequently, the director's decision to deny the application for this reason will be withdrawn.

Since the applicant appears to have overcome the grounds for the denial of his initial application for TPS, that decision has been withdrawn. The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any other grounds that would bar the applicant from receiving TPS. Therefore, the initial application will be approved.

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 met this burden.

ORDER: The director's denial of the initial application is withdrawn, and the application is approved.