



U.S. Citizenship
and Immigration
Services

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ML

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: OCT 12 2007

[EAC 07 059 70294]

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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 director denied the application because the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel asserts the applicant's claim of eligibility 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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. Subsequent extensions of the TPS designation have been granted with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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).

On February 16, 2007, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

1. An affidavit from [REDACTED] in which he stated that he has known the applicant since he was born, that the applicant entered the United States in October of [REDACTED] and that the applicant is of good moral character;
2. An affidavit from [REDACTED] which she stated that she has known the applicant since he was born, that the applicant entered the United States in October of [REDACTED] and that the applicant is of good moral character;
3. An affidavit from [REDACTED] in which she stated that she has known the applicant since he was born, that the applicant entered the United States in October of [REDACTED] and that the applicant is of good moral character;
4. An affidavit from [REDACTED] in which she stated that she has known the applicant since he was born, that the applicant entered the United States in October of 2000, and that the applicant is of good moral character; and,

5. An affidavit from [REDACTED] in which he stated that he has known the applicant since he was born, that the applicant entered the United States in October of 2000, and that the applicant is of good moral character.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on April 25, 2007.

On appeal, counsel states that the applicant should be granted TPS status because he has complied with all TPS requirements, and has established his continuous residence and continuous physical presence in the United States; as is evidenced in the five affidavits he submitted. Counsel further states that the applicant entered the United States on November 11, 2000, and re-entered the country on May 5, 2005. No additional evidence was submitted on appeal.

Contrary to counsel's assertions, the applicant has not submitted any evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the period from February 13, 2001, and March 9, 2001 to November 28, 2006, the date of filing. The applicant submitted affidavits in an effort to establish his residence and physical presence in the United States during the requisite time periods. Although the affiants state in the affidavits that they have known the applicant to be present in the United States since October of 2000, there has been no corroborative evidence to substantiate their assertions. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's continuous residence and continuous physical presence in the United States.

Form I-213, the Record of Deportable/Inadmissible Alien, contained in the record of proceedings, shows that the applicant was apprehended by the United States Border Patrol during a vehicle stop, while being transported by van on Interstate I-10 eastbound in Gulfport, Mississippi, on May 17, 2005. The record contains the applicant's photograph and fingerprints that were taken on the day of his apprehension by the Border Patrol. It is indicated in Form I-862, Notice to Appear for Removal Proceedings, and Form I-265, Notice to Appear, Bond, and Custody Processing Sheet, that the applicant entered the United States illegally at or near Eagle Pass, Texas, on or about May 14, 2005, which is subsequent to the eligibility period.

The record also contains the applicant's Form I-589, Application for Asylum and for Withholding of Removal, in which the applicant stated in Part A.I., number 18., sections a. and c., that he last left his country, El Salvador, on April 29, 2005, and that he entered the United States on May 14, 2005, and at no other time. The applicant also stated in the application, Part A.III., number 2., that he resided in the town of [REDACTED] from December of 1987 to May of 2005. The applicant further stated in the application, Part A.III., number 3., that he attended the [REDACTED] from January of 1996 to December of 2001. The applicant stated in the application, Part A.III., number 4., that he was employed by different employers in [REDACTED]

In part B., section B., of the Asylum application, the applicant was asked if he feared harm or mistreatment if he was to return to his home country? The applicant responded by stating:

My family and I were offended and insulted in many [times] by members of the above mentioned front, when they saw us they [told] us reactionaries, that we were going to be killed . . . [This] offenses and insults continued until April of 2005, when I decided to come to the United States, because I believed that I was going to be safe in this country.

The applicant submitted a copy of his mother's 2003 TPS re-registration application in which she indicated in Part 3, that the applicant was residing in El Salvador.

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 inconsistencies.

Based upon the information contained in the record of proceedings, the applicant entered the United States for the first time on or about May 14, 2005; and therefore, cannot satisfy the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.