



U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

JUL 21 2008

[WAC 05 228 80953]

[EAC 08 027 51025, *motion*]

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 California 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, California Service Center. A subsequent appeal was dismissed by the Chief, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The previous decision of the AAO will be affirmed and the motion to reopen 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 an initial Form I-821, Application for Temporary Protected Status, on August 3, 2003, under Citizenship and Immigration Services (CIS) receipt number EAC 03 239 55801. The Director, Vermont Service Center, denied that application on April 2, 2004, on the grounds that the applicant, though an eligible late registrant as the child of TPS eligible parents, failed to establish that he had been continuously resident and continuously physically present in the United States during the requisite periods. The record does not reflect that the applicant filed an appeal of the director's decision.

The applicant filed the current TPS application on March 25, 2005, and indicated he was re-registering for TPS. The Director, California Service Center, denied the re-registration application on April 16, 2006, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS. The applicant filed an appeal which was dismissed by the Chief of the AAO on August 2, 2007. The applicant has now submitted a motion to reopen.

On motion, the applicant states that he has continuously resided and has been continuously physically present in the United States since October of 2000.

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).

A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant claimed eligibility for late TPS registration, under C.F.R. § 244.2(f)(2)(iv), as the son of a TPS registrant. To be eligible for TPS, the child of a TPS eligible parent must meet the same continuous residence and continuous physical presence requirements as other applicants for TPS. A review of the alien registration file of the applicant's father reveals that he stated on his initial TPS application filed on March 24, 2001, signed and certified under penalty of perjury that the applicant and two other children were residing in El Salvador. In subsequent re-registration applications filed in 2002, 2003, and 2005, the applicant's father did not list the applicant or any other children on his application forms. On motion, the applicant and his father submitted statements claiming that the reason the applicant and two other children were not included on his father's previously filed TPS applications was because his father was never asked where his children resided. They claim that the individual who assisted the applicant's father with his TPS applications just asked his children's names and never asked where they were residing; and the individual assumed the children were

living in El Salvador. The applicant's father further states that he did not know why his children were not listed on his subsequent TPS applications, and claims he was never asked about his children and he always assumed that they were included on the applications. However, the applicant's father signed the forms affirming the correctness of information provided; consequently, CIS is not responsible for any action or inaction of the applicant's representative.

The applicant's motion consists of copies of the same documentation previously submitted relating to his claim of residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. It is noted that the applicant submitted evidence in Spanish without the required translation, and CIS cannot determine its relevance or authenticity. Any document containing foreign language submitted to CIS shall be accompanied by a certified, full English language translation of the document. 8 C.F.R. § 103.2(b)(3). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the applicant has not provided any new facts or additional evidence to overcome the previous decision of the AAO. Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

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 met this burden.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated August 2, 2007, is affirmed.