



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 149 53087]

Office: VERMONT SERVICE CENTER

Date: **JAN 30 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 office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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: 1) he was a national or citizen of El Salvador; 2) he continuously resided in the United States since February 13, 2001; and 3) he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his 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 TPS designation has been granted with validity until September 9, 2007, 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).

The first issue in this proceeding is whether the applicant has submitted sufficient evidence to establish that he is a native or citizen of El Salvador.

The applicant claims to be 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.

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.

On June 6, 2005, the applicant was requested to submit evidence to show that he is a national or citizen of El Salvador. The applicant failed to respond to the director's request for evidence.

The director determined that the applicant had failed to establish that he was a national or citizen of El Salvador and denied the application on August 11, 2005.

On appeal, the applicant asserts that he is a national or citizen of El Salvador. The record of proceedings contains the following documentation:

1. A translated copy of the applicants El Salvadoran birth certificate and a copy of the original birth certificate bearing the applicant's name, nationality, mother's name, and date of birth;
2. A copy of the applicant's El Salvadoran passport issued to him in the United States on August 23, 2005; and,
3. A copy of the applicant's El Salvadoran driver's license issued to him in El Salvador on August 11, 1996.

On review of the record, the applicant has provided sufficient evidence to establish that he is a national or citizen of El Salvador. The applicant has provided a copy of his El Salvadoran birth certificate along with an English translation, bearing the applicant's name, date of birth, place of birth, and mother's name. The applicant also submitted a copy of his El Salvadoran passport and driver's license that contains his photograph, name, and nationality. The applicant has submitted sufficient evidence to establish that he is a national and citizen of El Salvador. Therefore, the director's decision with respect to this issue will be withdrawn.

A second issue in this proceeding is whether the applicant has submitted sufficient evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The applicant initially submitted the following documentation along with his TPS application:

4. A copy of Gigante Express money order receipts dated March 12, 2000, and January 29, 2001.

The applicant failed to respond to the director's request for evidence to establish his continuous residence and continuous physical presence in the United States. The director subsequently determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 11, 2005.

On appeal, the applicant reasserts his claim of eligibility for TPS and submits the following documentation:

5. A copy of a handwritten IRS Form 1099-MISC for the 2000 tax year bearing the applicant's name as employee;
6. A copy of a handwritten insurance card from GEMGroup dated October 11, 2000, and bearing the applicant's name as the insured;
7. A copy of receipts dated November and December of 2001, and June of 2005, and bearing the applicant's name;and,
8. A copy of a receipt from [REDACTED], dated June 3, 2002, and bearing the applicant's name.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The Gigante Express money order receipts, IRS Form 1099, and GemGroup insurance card are all dated prior to the requisite time periods and cannot be used to establish the applicant's eligibility for TPS.

All other evidence submitted by the applicant is dated subsequent to February 13, 2001 and March 9, 2001 through March 16, 2001, when the TPS application was filed. The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria 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.