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U.S. Citizenship
and Immigration
Services

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JUN 04 2007

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER
[EAC 04 082 52599 as it relates to EAC 01 165 51182]

Date:

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 California Service Center. Any further inquiry must be made to that office.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The initial application was denied by the Director, Vermont Service Center. A subsequent application for re-registration was denied by the Director, Vermont Service Center, and is currently before the Administrative Appeals Office (AAO) on appeal.¹ The initial application will be reopened, *sua sponte*, by the Chief, Administrative Appeals Office. The appeal will be sustained and the applications will be approved.

The applicant is 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 applicant appears to be represented; however, the record does not contain a signature on the Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

The applicant filed an initial application for TPS under receipt number EAC 01 165 51182. The Director, Vermont Service Center, denied the initial application on April 10, 2003, due to abandonment, because the applicant failed to respond to the director's request for police clearance records.²

The applicant filed a motion on May 1, 2003. This was dismissed on July 8, 2003. The applicant filed a subsequent motion on December 30, 2003. This motion was denied on December 30, 2003. The applicant had submitted the police clearance on April 29, 2003, after the denial, but prior to the filing of the two motions.

During this same timeframe, the applicant made three attempts to file for re-registration between August and November of 2003. He was advised that since his previous application for TPS had been denied, that he could file for late initial registration (without any further explanation of the requirements for eligibility under this category).

The applicant filed another application on January 28, 2004. After failing to submit sufficient evidence of eligibility for late initial registration and continuous physical presence and continuous residence, the director denied this application on these grounds on September 10, 2004.

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;

¹ Another application, filed September 12, 2006, was denied on January 18, 2007, because a previous application had been denied. Based on the decision on this appeal, the application that post-dates the appeal should also be approved on Service motion, barring any new disqualifying factors.

² The applicant's two attempts to be fingerprinted on April 18, 2002, and June 17, 2002, both resulted in unclassifiable fingerprints, thus necessitating this request. On April 23, 2006 the applicant's fingerprints were classifiable. This resulted in a report of no criminal record that would bar the applicant from receiving TPS.

- (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 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 applicant initially submitted the following documentation:

1. A letter from Gigante Express in which a representative stated that the applicant had been one of its clients, using the services on a monthly basis since the year 2000;
2. A copy of a receipt from Gigante Express dated September 1, 2001, and bearing the applicant's name as sender;
3. A letter from The Four Star Restaurant Corp. in which a representative stated that the applicant had been employed by the restaurant from February of 2001 to July of 2003;
4. Copies of the applicant's Internal Revenue Service (IRS) Form 1040, Individual Income Tax Return, for the years 2000 and 2001
5. Copies of the applicant's IRS Form W-2, Wage and Tax Statement from The Four Star Restaurant Corp. and Constellation Concepts, Inc., for the years 2000 and 2001;
6. A copy of a pay stub from 4 Cav Co Inc dated April 21, 2003, and bearing the applicant's name as employee;
7. A copy of the applicant's Cablevision bill dated February 8, 2002; and,
8. A copy of the applicant's Sprint bill dated July 12, 2002.

On June 29, 2004, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States. The applicant, in response, provided the following documentation:

9. Copies of Citizenship and Immigration Services (CIS) notices of receipt of applications and motions dated March 30, 2001, September 12, 2002, May 1, 2003, and December 30, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 10, 2004.

On appeal, the applicant reasserts his claim and submits the following documentation:

10. Copies of the applicant's IRS Form 1040, Individual Income Tax Return for the years 2002 and 2003;

11. Copies of the applicant's IRS Form W-2, Wage and Tax Statement from The Four Star Restaurant Corp. and Constellation Concepts, Inc. for the years 2002 and 2003;
12. A copy of the applicant's statement of earnings dated April 4, 2001 from Constellation Concepts, Inc.;
13. Copies of pay stubs from Cav Co Inc. dated April 28, 2003 and May 12, 2003;
14. A copy of a receipt from Gigante Express dated January 3, 2001 and bearing the applicant's name as sender;
15. Copies of Western Union money gram receipts dated August, November, and December of 2003, and January and April of 2004 and bearing the applicant's name as sender;
16. Copies of Cablevision bills dated December of 2003 and June of 2004 and bearing the applicant's name as customer; and,
17. Copies of Sprint bills dated August of 2002, October and December of 2003, and February and May of 2004.

The applicant has submitted sufficient credible evidence to establish his qualifying continuous residence and continuous physical presence in the United States since February 13, 2001, and March 9, 2001, respectively. Consequently, the director's decision to deny the application for TPS on these grounds will be withdrawn.

The record of proceedings contains sufficient evidence to establish the applicant's eligibility for TPS and does not reflect any grounds that would bar the applicant from receiving TPS. Therefore, the director's decision will be withdrawn and the initial application will be approved.

The director's denial of the applicant's TPS application receipt number EAC 04 082 52599, filed on January 28, 2004, is dependent upon the adjudication of the initial application. Since the initial application is being approved, the appeal from the denial of the January 28, 2004 application will be sustained and that application will also be approved.

ORDER: The application is reopened and the director's denial of the initial application is withdrawn. The initial application and the re-registration application are both approved, and the appeal will be sustained.