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[REDACTED]

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAY 07 2007
[EAC 06 133 50861]

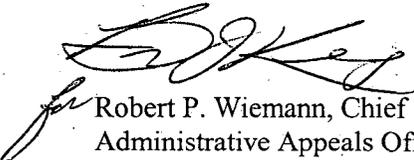
IN RE: Applicant: [REDACTED]

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.


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 had failed to submit evidence to establish: (1) that he was eligible for late registration; (2) his nationality and identity; and (3) he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, the applicant submits a statement and additional evidence, including evidence previously furnished and contained in the record.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. 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 initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on March 29, 2006.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

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).

In a Notice of Intent to Deny dated June 14, 2006, the applicant was requested to submit evidence to establish that he was eligible to register under the late initial registration provisions. The applicant was also requested to submit evidence to establish nationality and identity, and evidence to establish continuous residence and continuous physical presence in the United States. The director noted that in response, the applicant submitted a statement and an affidavit in an attempt to establish residence and physical presence. The director, therefore, determined that the evidence furnished was insufficient to establish eligibility for TPS and denied the application on August 31, 2006.

On appeal, the applicant asserts that he arrived in this country on December 20, 2000, that he is presently 18 years old, he is still a child, and that his mother [REDACTED] had been granted TPS. To support his claim, the applicant submits a copy of Ms. [REDACTED] TPS application and a copy of her Employment Authorization Card issued on July 25, 2005, under category A12. He also submits a copy of an El Salvadoran passport issued to the applicant on May 11, 2006, in Los Angeles, California.

While regulations at 8 C.F.R. § 244.2(f)(2)(iv) allow children of aliens who are TPS-eligible to file applications after the initial registration period had closed, these regulations do not relax the requirements for eligibility for TPS. According to 8 C.F.R. § 244.2, an alien may in the discretion of the director be granted TPS if the alien establishes that he or she meets all the requirements listed in subparagraphs (a), (b), (c), (d), (e) and subparagraph (f)(1), or (f)(2).

File [REDACTED], belonging to the applicant's mother [REDACTED], was subsequently reviewed. It is noted that Ms. [REDACTED] indicated on her initial TPS application, filed on March 21, 2001, that [REDACTED] (the applicant) was residing in "Col. [REDACTED]". Also contained in Ms. [REDACTED] file: (1) is an Application for Travel Document, Form I-131, filed on May 2, 2003, requesting advance parole to return to El Salvador for "emergency because my son needs a risky surgical;" (2) is a letter dated April 28, 2003, from Dr. [REDACTED], El Salvador, certifying that "he has attended in his particular clinic to [REDACTED], of fourteen years of age, who suffers of abdominal pain," a surgical procedure has been scheduled, and the presence of his mother, [REDACTED] was needed because she is the head of the family.

Based on the information contained in Ms. [REDACTED]'s file, it is determined that the applicant was not present in the United States during the period required to establish eligibility. Therefore, he could not have met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. 8 C.F.R. § 244.2(b) and (c). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The reliability of the evidence furnished in an attempt to establish residence and physical presence offered by the applicant, specifically, the affidavits from [REDACTED] and Pastor [REDACTED], is suspect.

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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The applicant has failed to establish that he has met the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the TPS application will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 failed to meet this burden.

ORDER: The appeal is dismissed.