U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: VERMONT SERVICE CENTER DATE: OCT 24 2007

[EAC 02 043 51325]

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 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.

The director determined that the applicant had failed to establish that he had continuously resided in the United States since February 13, 2001. He also determined that the applicant had failed to establish that he is a national of El Salvador. The director, therefore, denied the application.

On appeal, the applicant submits a statement and additional evidence.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.

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 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).

The first issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application.

The record shows that the applicant filed his TPS application on November 21, 2001. In a notice of intent to deny dated September 12, 2002, the applicant was requested to submit evidence to establish that he had continuously resided in the United States since February 13, 2001. The director determined that the copies of statements from Bally Total Fitness appear to have been altered and casts doubt on their credibility and on his claimed residence. The director, therefore, denied the application on April 14, 2003.

On appeal, the applicant neither addresses the director's objection regarding the altered statements from Bally Total Fitness, nor submits any evidence to refute the director's findings. Rather, the applicant submits the following evidence in an attempt to establish his residence in the United States:

1. A copy of a membership card from BJ's Wholesale Club, issued in 2001.

2. A statement dated April 26, 2003, from [redacted] Seventh-Day Adventist Church, Brentwood, New York, indicating that the applicant had assisted the church since April 1, 1998.

3. A statement dated April 22, 2003, from [redacted], Human Resources [redacted], Hauppauge, New York, indicating that the applicant was employed there from October 15, 1997 to July 31, 2001.

The membership card from BJ's Wholesale Club (No. 1 above) does not indicate the month in 2001 when it was issued. The statement from [redacted] (No. 2 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests. In addition, the employment letter from [redacted] o. 3 above) has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the letter is not in affidavit form and attested to by the employer under penalty of perjury, and the employer does not provide the address or addresses where the applicant resided during the period of his employment, and the periods(s) of layoff, if any. In addition, the statement is not supported by any corroborative evidence to establish that the applicant was employed there from February 13, 2001, the date from which the applicant must establish his continuous residence in the United States, through July 31, 2001.

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 submit any objective evidence to explain or justify the altered documents he provided. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

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

The next issue in this proceeding is whether the applicant has established that he is a national of El Salvador.

The director noted that at the time of his arrest by the Service on September 19, 1997, the applicant claimed birth in Guatemala and citizenship as Guatemalan, and, therefore, casts doubt on his present claimed citizenship as El Salvadoran. The director, therefore, determined that the applicant had failed to establish that he is a national of El Salvador and denied the application on April 14, 2003.

On appeal, the applicant, through former counsel, asserts that he was born in El Salvador, but moved with his parents to the Guatemalan border when he was two years old. The applicant further asserts that he was residing in Guatemala prior to the time he entered the United States.

The record indicates that the applicant was arrested by the United States Border Patrol near Tucson, Arizona, on September 19, 1997, and was placed in removal proceedings. At the time of his arrest, the applicant claimed he was born in Guatemala and that he is a citizen of Guatemala.

The applicant is now claiming to be a national of El Salvador. He submitted with his appeal a copy of his El Salvadoran birth certificate, with English translation, and a copy of the biographic pages from his El Salvadoran passport issued by the Consul General in Long Island, New York, on January 22, 2002. It is noted, however, that the birth certificate contains evidence of alteration.

The United States Court of Appeals, in *Chee Kin Jang v. Reno*, 113 F. 3d 1074 (9th Cir. 1997), stated that an alien is bound by the nationality claimed or established at the time of entry for the duration of his or her stay in the United States. In *Chevron USA, Inc. v. Natural Resources Defense Counsel,* 467 U.S. 837, 842-43 & n.9 (1984), the District Court held that the practice of binding an alien to his claimed nationality "promotes the congressional policy of insuring that an alien will be able to return, voluntarily or otherwise, to his or her country of origin if requested to do so and provides for consistency in the enforcement of law, especially given the large numbers of nonimmigrant foreign nationals who visit the United States each year."

Additionally, the Board of Immigration Appeals, in *Matter of Ognibene*, 18 I&N Dec. 425 (BIA 1983), held that under appropriate circumstances in a given proceeding of law, the operative nationality of a dual national may be determined by his conduct without affording him the opportunity to elect which of his nationalities he will exercise. The General Counsel, in GENCO OP. 84-22 (July 13, 1984), reinforced this concept and states, "In interpreting a law which turns on nationality, the individual's conduct with regard to a particular nation may be examined. An individual's conduct determines his 'operative nationality.' The 'operative nationality' is determined by allowing the individual to elect which nationality to exercise. The nationality claimed or established by the nonimmigrant alien when he entered the United States must be regarded as his sole nationality for the duration of his stay in the United States." (Emphasis in original).

Further, the General Counsel, in GENCO Op. 92-34 (August 7, 1992), concluded that the Service may, in the exercise of discretion, deny TPS in the case of an alien who, although a national of a foreign state designated for TPS, is also a national of another foreign state that has not been designated for TPS. The General Counsel explains that "TPS is not a provision designated to create a general right to remain in the United States. Rather, the statute provides a regularized means of granting haven to aliens who, because of extraordinary and temporary circumstances, cannot return to their home country in safety. *See id.* 244A(b)(1)(A), (B), and (C), 8 U.S.C. § 1254A(b)(1)(A), (B), and (C)."

The nationality the applicant claimed at the time he first came into contact with CIS was that of Guatemala. Although the issue of dual nationality is not at question in this proceeding, the record is clear in establishing that the applicant elected to present himself as a national of Guatemala to the United States government at the time of his initial attempt to enter into the United States. The applicant has not furnished any explanation of his change in nationalities.

The country of Guatemala is not a designated foreign state under section 244 of the Act. The applicant has failed to establish that he is a national of a foreign state designated by the Attorney General and eligible for the granting of TPS under section 244 of the Act. Accordingly, as the applicant has not demonstrated that his "operative nationality" is that of a TPS-designated country, the director's decision to deny the application on this ground will be affirmed, as a matter of discretion.

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.