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FILE:

[WA 05 228 78538]

Office: CALIFORNIA SERVICE CENTER

DEC 29 2006
Date:

IN RE:

Applicant:



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, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 denied the application because Service records show that the applicant's initial Form I-821 was denied on February 5, 2003 for abandonment because the applicant failed to respond to a request for additional evidence.

The record reveals that the applicant filed Form I-821, Application for Temporary Protected Status on June 22, 2001 under CIS receipt number SRC-01-234-53944. The application was denied by the Director, Texas Service Center, on February 5, 2003 because the applicant failed to submit documents in response to a Request for Evidence and, therefore, had abandoned his application.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The applicant was requested on September 24, 2002, to submit the following:

- 1) Documentary evidence of continuous residency since 2/13/2001 and continuous physical presence from 3/09/2001 to the date of filing.
- 2) Evidence of identity and nationality.

The director stated that the applicant failed to respond to this request; therefore, the director concluded that the applicant had abandoned his application and denied the application on February 5, 2003.

A review of the record reveals that the applicant submitted a timely response on October 15, 2002 consisting of the following:

1. A letter from Steve Davenport, principal of Lake Hamilton Intermediate School in Pearcy, Arkansas stating that the applicant had been a student in that school district since August 1999.
2. A letter from [REDACTED] residing at 1286 Blacksnake Road, Hot Spring, Arkansas stating that she has known the applicant since 1998 and that he resided with his parents in Hot Spring, Arkansas.
3. A letter from [REDACTED] of the Glenwood Hispanic Seventh Day Adventist Church in Glenwood, Arkansas stating that he has known the applicant since 1998 and that he resided with his parents in Hot Spring, Arkansas.

The record of proceeding, therefore shows that the applicant did respond to the applicant's request for evidence. The response was received by the Texas Service Center on October 15, 2002, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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 designated by the Attorney General 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.
- (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 conditions described in paragraph (f)(2) of this section.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence 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 July 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 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).

As stated above, the applicant was requested on September 24, 2002 to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant submitted the following documentation:

- 1) A letter from Steve Davenport, principal of Lake Hamilton Intermediate School in Percy, Arkansas stating that the applicant had been a student in that school district since August 1999.

- 2) A letter from [REDACTED] stating that she has known the applicant since 1998 and that he resided with his parents in Hot Spring, Arkansas.
- 3) A letter from [REDACTED] in Glenwood, Arkansas stating that he has known the applicant since 1998 and that he resided with his parents in Hot Spring, Arkansas.

The statements from [REDACTED] and [REDACTED] regarding the applicant's claimed presence in the United States before December 30, 1998 are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence (such as school records) to support these assertions; however, no such evidence has been provided. Further, affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence.

The affidavit from [REDACTED] 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.

The applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Furthermore, there is no documentary evidence of his identity and nationality. Therefore, the director's finding that the applicant is ineligible for TPS will be affirmed.

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.