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Washington, DC 20529

U.S. Citizenship and Immigration Services

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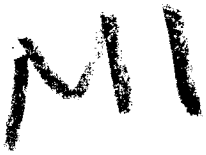

[redacted]

FILE: [redacted] Office: California Service Center Date: OCT 19 2006
(WAC 05 162 73041)

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.

Cindy M. Gomez for

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 remanded for further consideration and action.

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 USCIS records show that the applicant's initial Form I-821 was denied for failure to establish prima facie eligibility.

The record reveals that the applicant initially filed Form I-821, Application for Temporary Protected Status on June 5, 2001 under CIS receipt number SRC-01-228-69160. The application was denied by the Director, Texas Service Center, on August 16, 2003 because the applicant failed to submit documents in response to a Request for Additional Information (RFI) asking the applicant to submit evidence to show that he resided in the United States prior to February 13, 2001 and that he has been physically present in the United States from March 9, 2001 until the date of filing his application. He was also asked to submit proof of his legal name, nationality and date of birth as well as a picture identification.

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 record of proceeding, however shows that the RFI was mailed on January 24, 2003 to the wrong address, i.e. [redacted] Charlotte, NC 28210. The correct address is actually [redacted] Charlotte, NC 28210, the applicant's current mailing address at that time. The Service also mailed to the applicant a Notice of Intent to Deny on July 7, 2003, to the same wrong address that was returned by the United States Postal Service.

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).

There is insufficient evidence in the record to establish that the applicant has continuously resided in the United States since February 13, 2001 and that he has been continuously physically present in the United States since March 9, 2001. The record contains a copy of a North Carolina Driver's License issued on July 17, 1998 and a copy of a birth certificate for his son dated December 3, 1999. The letter from [redacted] dated February 27, 2001 does not conform to the regulatory provisions at 8 C.F.R. section 244.9(a)(2)(v)(A) through (G). There is therefore no evidence that the applicant resided in or was physically present in the United States from December 3, 1999 until he filed his TPS application on June 5, 2001. However, the applicant was not able to submit evidence to establish these requirements because of the erroneous mailing addresses of the RFI and the Notice of Intent to Deny.

Consequently, the director's decision will be withdrawn and the case will be remanded. The director may request any evidence deemed necessary to assist him with the determination of the applicant's eligibility for TPS. As always, in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The case is remanded to the director for further action consistent with the above.