



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **DEC 28 2007**

consolidated herein]

[WAC 02 056 53448]

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, California 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 was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on March 2, 2002. Because it was subsequently determined that the approval of the TPS application was in error based on evidence of record indicating that the applicant's entry into the United States was on June 15, 2001, the director reopened the applicant's case on a Service Motion to Reopen/Reconsider on May 1, 2002, and afforded the applicant 30 days in which to submit evidence and/or a written statement in rebuttal to the notice. On June 27, 2002, the director denied the TPS application after concluding that the applicant had failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

In this case, however, the director should have withdrawn the applicant's TPS status rather than deny the application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. Accordingly, the decision of the director to deny the initial TPS application will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

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 applicant filed his TPS application on November 28, 2001, and he stated on the application that he entered the United States without inspection on December 20, 2000.

The record indicates that the applicant was apprehended by the United States Border Patrol at the California Agriculture Inspection Station near Blythe, California, on August 8, 2001. At the time of his apprehension, the applicant was a passenger in a car being driving by [REDACTED]. Another individual, who identified himself as [REDACTED] the applicant's cousin, was also a passenger in the car. [REDACTED] provided the officers with his El Salvadoran passport bearing a stamp indicating that he had been granted lawful permanent resident status. It was also determined that [REDACTED] was a lawful permanent resident. [REDACTED] and [REDACTED] were released, but the applicant was arrested and transported to the U.S. Border Patrol station near Blythe, California, as it was determined that he was in unlawful status in the United States.

According to the Form I-213, Report of Deportable Alien, dated August 8, 2001, the applicant stated to the interviewing officers that he left his hometown of [REDACTED], Usulután, El Salvador, in the beginning of May 2001. He stated that he walked and took several buses until he reached the Guatemalan border, where

he purchased a visitor's permit. He further stated that he entered Mexico illegally, traveled through Mexico until he arrived at the United States border at Agua Prieta, Sonora, Mexico, where he entered illegally into the United States near the Douglas [Arizona] Port of Entry on June 15, 2001, by walking through the desert. The applicant was placed in removal proceedings, and on April 19, 2002, an Immigration Judge in Los Angeles, California, administratively closed removal proceedings based on the filing of a TPS application by the applicant.

The director approved the initial TPS application on March 2, 2002. On May 1, 2002, the director reopened the applicant's case on a Service Motion to Reopen/Reconsider, and issued a Notice of Intent to Deny (NOID) informing the applicant of the information detailed above, and providing him with an opportunity to submit evidence and/or a written statement in rebuttal to the NOID. In response, the applicant contended that the date of entry listed on the Form I-213 is "totally wrong." The applicant explained that he accompanied [REDACTED] and [REDACTED] to the Phoenix, Arizona, area, to visit some relatives of [REDACTED] on or about June 15, 2001. He asserted that they were detained by the United States Border Patrol at a checkpoint when they were on their way back to California. The applicant claimed that he has lived and worked in the United States since December 20, 2000.

The applicant explained that he did not have much evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods because he was living with [REDACTED], his cousin, and all the bills were in [REDACTED] name. The applicant further stated that any money he sent to El Salvador was carried by "personal messengers" who traveled to his home town every month. He submitted the following evidence:

1. Photocopies of two invoices bearing the applicant's name from Copy Systems Industries (CSI) in Gardena, California, dated January 11, 2001, and February 20, 2001, respectively.
2. A letter dated November 5, 2001, from [REDACTED] Secretary of the Church of God in Los Angeles, California, stating that the applicant has been a member of his church since January 12, 2001.
3. A statement dated November 7, 2001, from [REDACTED] stating that the applicant has lived in the United States with his cousin, [REDACTED], at [REDACTED], Arleta, California, since December 20, 2000.
4. A statement dated November 3, 2001, from [REDACTED] stating that the applicant has lived with him at [REDACTED], Arleta, California, since December 20, 2000.
5. A statement dated November 3, 2001, from [REDACTED] stating that the applicant has been living in the United States since December 20, 2000.

In the Notice of Decision dated June 27, 2002, the director determined that, since the applicant did not enter the United States until June 2001, he cannot establish 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).

On appeal, the applicant repeats his assertions that he originally entered the United States on December 20, 2000, and that he and his friends were on their way back to Los Angeles after visiting friends in Phoenix, Arizona, when they were detained by the United States Border Patrol. He submits copies of evidence previously submitted in response to the NOID.

The letter from [REDACTED] of the Church of God (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 letter is not in affidavit format, and [REDACTED] does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. Without corroborative evidence, the statements from [REDACTED] (No. 3 above), [REDACTED] (No. 4 above), and [REDACTED] (No. 5 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. It is noted that the statements from [REDACTED] and [REDACTED] were not notarized. It is further noted that two of the individuals who provided these statements, [REDACTED] (No. 4 above) and [REDACTED] (No. 3 above) were the driver and the other passenger who were in the car with the applicant when the applicant was apprehended by the United States Border Patrol on August 8, 2001. The CSI invoices dated "01-11-001" and "02-20-001" (No. 1 above) are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence in the United States. Both invoices appear to have been altered. 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's claim on the Form I-821 that he entered the United States without inspection on December 20, 2000, directly contradicts his previous statements to the United States Border Patrol that he left his home in [REDACTED], Usulután, in the beginning of May 2001, and entered the United States without inspection on or about June 15, 2001. The applicant asserts, on appeal, that the date recorded by the apprehending officers on the Form I-213 "is totally wrong" and resulted from a misunderstanding because the applicant does not speak much English. The applicant's assertion lacks credibility as it is supported only by the letters and altered invoices discussed above. Additionally, the record indicates that the interview with the U.S. Border Patrol at the time of the applicant's apprehension on August 8, 2001, was conducted in the Spanish language. The evidence of record supports a conclusion that the applicant entered the United States on or about June 15, 2001, the entry date the applicant provided to the United States Border Patrol when he was apprehended on August 8, 2001. Furthermore, the two individuals who were primary in transporting the applicant in the United States also were the very same individuals who provided questionable affidavits. In view of the foregoing, it is concluded 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).

Consequently, the director's finding that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods will be affirmed, and the approval of the applicant's Temporary Protected Status will be withdrawn.

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.