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U.S. Citizenship
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FILE:

[REDACTED]
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[A94 759 277 consolidated]

OFFICE: VERMONT SERVICE CENTER DATE:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director
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 denied the application because the applicant failed to submit evidence to establish his identity and nationality, continuous residence, and continuous physical presence in the United States.

On appeal, the applicant asserts that he is eligible for TPS.

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 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 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 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).

Persons applying for TPS offered to El Salvadorans must demonstrate that he or she is a citizen or national of a state designated under section 244(b) of the Act.

The regulations at 8 C.F.R. § 244.9 state that each application for TPS must be accompanied by evidence of the applicant's identity and nationality.

Sec. 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of: (Amended 11/16/98; 63 FR 63593)

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or

- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

On July 31, 2003, the applicant was requested to submit evidence to show that he is a citizen or national of El Salvador. The applicant failed to respond to the director's request for evidence.

The director denied the TPS application on August 4, 2004, because the applicant had failed to submit evidence of his identity and nationality, continuous residence, and continuous physical presence in the United States.

On appeal, the applicant states that he is submitting proof that he has resided in the United States before and since February 13, 2001, and that he has been employed by [REDACTED] who was not available at the time the application was filed.

The applicant submitted a copy of an El Salvadoran passport issued to him in the United States. However, the record of proceeding shows that the applicant, known as [REDACTED] was apprehended by members of the USINS border patrol on January 20, 2002, at Del Rio, Texas, having illegally entering the country. The evidence shows that the applicant was detained and a photograph was taken of him and his fingerprints were taken and made part of the record. It is further noted that the applicant signed a sworn statement that he was a citizen and national of Guatemala and that his home address was [REDACTED] Guatemala, Guatemala. Consequently, the director's conclusion that the applicant had failed to establish that he was a citizen or national of El Salvador will be affirmed.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant submitted copies of receipts that were dated subsequent to the requisite time periods. The applicant also submitted affidavits written by acquaintances that have not been substantiated by any credible evidence. The record of proceeding shows that the applicant is Guatemalan rather than El Salvadoran; and therefore, cannot establish continuous residence and continuous physical presence in the United States during the requisite time periods as described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for this reason will also be affirmed.

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.