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U.S. Citizenship
and Immigration
Services

M,

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 26 2008

[WAC 03 056 53183]

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:

[REDACTED]

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 "Robert P. Wiemann".

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 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 establish he had: 1) continuously resided in the United States since February 13, 2001; and, 2) been continuously physically present in the United States since March 9, 2001.

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.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The designation of TPS for El Salvadorans has been extended several times, 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 record contains a Form I-213, Record of Deportable/Inadmissible Alien, which indicates that on April 4, 2002, the applicant was apprehended by the United States Border Patrol near Calexico, California. At the time of his apprehension, the applicant indicated that on March 20, 2002, he used his passport to travel by bus into Guatemala then onto the Guatemala-Mexico border. He walked across the border and took a bus to Mexicali, Mexico on April 1, 2002. He made arrangements with an unknown man at a motel in Mexicali to enter into the United States. On April 4, 2002, he was driven across the Mexico-United States border. The applicant also indicated that he came to the United States in order to work.

On April 5, 2002, a Form I-862, Notice to Appear, was issued and on February 4, 2003, an immigration judge issued an order granting the applicant voluntary departure in lieu of removal on or before June 4, 2003. No satisfactory evidence has been introduced into the record to establish the applicant made a timely departure. On June 4, 2003, a Form I-205, Warrant of Removal/Deportation was issued.

At the time the applicant filed his TPS application, he indicated on his application that he entered the United States on April 4, 2002. Counsel, in a letter dated October 29, 2002, acknowledged that the applicant had entered the United States on April 4, 2002, but claimed that the applicant was eligible for late registration as a child of an alien currently eligible to be a TPS registrant. As evidence, counsel provided a copy of the employment authorization card of the applicant's father, [REDACTED] an El Salvadoran national.

The director, in denying the application on April 12, 2006, concluded that the applicant had failed to establish continuous residence in the United State since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, counsel asserts, "[p]ursuant to 8 C.F.R. § 244.3 inadmissibility based upon an illegal entry to the United States may be waived." Counsel argues that the director failed to avail the applicant the opportunity to file a waiver based on his inadmissibility.

The applicant is inadmissible under section 212(a)(9)(A) of the Act, as he is an alien who has been previously removed from the United States. The AAO agrees that such grounds of inadmissibility may be waived pursuant to 8 C.F.R. § 244.3(b). However, the director, in denying the application, did not find the applicant to be inadmissible. The basis for the denial of the application was the applicant's failure to establish continuous residence and continuous physical presence in the United States during the requisite periods.

It is noted for the record that it would serve no basis for the applicant to submit a Form I-601, Application for waiver of Grounds of Excludability, as the applicant is ineligible for the benefit being sought due to his April 4, 2002, entry into the United States.

On appeal, counsel cites 8 C.F.R. § 244.9 and asserts that the director did not inform and provide the applicant with an opportunity to respond prior to denying the TPS application.

Counsel's assertion, however, has no merit as the regulation at 8 C.F.R. § 244.9(a) is defined as follows:

Documentation. Applicants shall submit all documentation as required in the instructions *or* requested by the Service. [Emphasis added.]

Counsel cites no regulation or statute that compels the director to issue a request for documentation prior to the issuance of the Notice of Decision. The instructions on the TPS application clearly detail what documents are needed and should be submitted at the time a TPS application is filed. Except for his birth certificate with the English translation, and his father's employment authorization card, the applicant failed to provide any other evidence to support his application.

Pursuant to 8 C.F.R. § 244.2(f)(2)(iv), the applicant has met the threshold requirement for late registration as during the initial registration period (March 9, 2001, through September 9, 2002) he was a child of an alien currently eligible to be a TPS registrant. However, this requirement alone does not render the applicant eligible for the benefit being sought. The applicant must meet all other requirements, namely continuous residence since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, as required in 8 C.F.R. § 244.2(b) and (c). The applicant cannot establish continuous residence and continuous physical presence in the United States during the requisite periods as he did not enter the United States until April 4, 2002. Consequently, the director's decision to deny the application for TPS will 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.

ORDER: The appeal is dismissed.