



U.S. Citizenship
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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 01 2009
[EAC 08 052 81730]

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, 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 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 determined that 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. The director, therefore, denied the application.

On appeal, the applicant's mother requests that her son's case be reopened. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States.

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 as 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 section 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 physically present*, as used 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 term *continuously resided*, as used 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 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 granted until September 10, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial TPS application on November 21, 2007. In support of his application, the applicant submitted the following:

1. A copy of an airline ticket from Southwest Airlines indicating a flight was taken on September 29, 2002.
2. Copies of a Salvadoran birth certificate, with English translation, a Salvadoran passport, issued in Washington, D.C. on December 2, 2002, and an Ident-A-Kid Identification card issued on September 19, 2006.
3. Copies of TPS-derived Employment Authorization cards for the applicant's parents.

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 United States Citizenship and Immigration Services (USCIS). 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 shows that the applicant filed his TPS application on November 21, 2007. On April 8, 2008, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant, in response, provided:

4. Copies of a registration form for the Centro de la Comunidad, Inc., dated April 15, 2008 and signed by the applicant's mother indicating the applicant was last seen on February 10, 2001; a letter from Centro de la Comunidad, Inc., stating that the applicant's mother has been a client since 2001 when her son, the applicant, became sick.
5. A note from Johns Hopkins Bayview Medical Center stating that the applicant has been followed by Care A Van since February 10, 2001.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. Therefore, the director denied the application.

On appeal, the applicant's mother requests that the applicant's case be reconsidered. The applicant also submits another letter from Johns Hopkins Bayview Medical Center stating that the applicant had been followed by the Care A Van since February 10, 2001. The applicant also resubmits evidence previously provided.

The passport establishes the applicant's nationality and identity. The document from Centro de la Comunidad was a document prepared by or for the applicant's mother and is therefore of little or no probative value in determining the applicant's continuous residence and continuous physical presence. The note from Johns Hopkins indicates the applicant was present in the United States on February 10, 2001, but this documentation can not establish the applicant's continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application, in this case, November 21, 2007. The remaining evidence is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States and is therefore of little or no probative value.

It is noted that a check of the records of the applicant's parents indicates that on their initial TPS application, they do not list the applicant as being in the United States with them. This is further evidence that the applicant has not met the continuous residence and physical presence criteria described in 8 C.F.R. § 244.2(b) and (c), thereby precluding a finding that the applicant resided in the United States during the operable timeframe.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c).

Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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