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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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JUL 08 2009

FILE:

[WAC 01 172 50996]

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 record reveals that the applicant filed a TPS application during the initial registration period on May 1, 2001, under receipt number WAC 01 172 50996. The Director, California Service Center, approved that application on February 17, 2004.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined 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. 8.C.F.R. § 244.14(a)(1).

The director withdrew temporary protected status because the applicant failed to establish her identity.

On appeal, counsel for the applicant claims that the director abused his discretion in not crediting the identity evidence the applicant submitted in support of her application to re-register 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 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.

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. Section 244.9(a)(1).

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 her initial TPS application on May 1, 2001.

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 her TPS application on May 1, 2001 under the name of [REDACTED]. On September 10, 2007, the applicant submitted a re-registration application under the name of [REDACTED]. On October 23, 2007, the applicant was provided the opportunity to submit evidence establishing her identity and to establish that [REDACTED] and [REDACTED] are the same person. The applicant, in response, provided:

1. A personal "Declaration."
2. A passport for [REDACTED], an original birth certificate for [REDACTED], with English translation, and a photocopy of a birth certificate for [REDACTED].
3. A copy of an El Salvadoran passport for [REDACTED].
4. A copy of a Form I-94, Arrival/Departure Record for [REDACTED] showing admission into the United States on February 2, 2002.
5. A copy of the re-registration applications and the request for evidence.

The director determined that the applicant failed to clearly establish her true identity. Therefore, the director withdrew the applicant's temporary protected status.

On appeal, counsel claims the director abused his discretion by not crediting the identity evidence the applicant submitted in support of her re-registration application. According to counsel, the new evidence constituted prima facie evidence of her nationality. Counsel contends that the applicant's admission, in her "Declaration" was an admission against her interest that exposed her to civil and criminal liability, and that such an admission is presumptively credible.

As pointed out by the director, the applicant admitted that she used her sister's birth certificate to obtain a passport, which she then used to obtain TPS. The applicant also stated that she returned her El Salvadoran passport to a friend who worked at the airport in El Salvador in February 2000 in order to have an entry stamp placed in the passport indicating that she entered El Salvador on February 19, 2000. The applicant stated that she did not depart the United States and enter El Salvador on that date, but actually departed the United States and returned to El Salvador on January 2, 2002, but no entry stamp was placed in her passport. The applicant used her B-2 Visa to enter the United States on February 2, 2002; however, the applicant worked with an Employment Authorization Card issued under C(19) classification, which is a violation of the B-2 status.

The director determined that due to discrepancies the applicant's documents were questionable and not credible. The discrepancies in the record have not been satisfactorily explained. 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). Therefore, the director's decision to withdraw the applicant's temporary protected status is affirmed.

Beyond the director's decision, it is noted that pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. The applicant, in this case, sought to procure TPS benefits under section 244 of the Act. The applicant, therefore, appears inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act. Furthermore, it is also noted that the applicant has provided insufficient evidence to establish her qualifying continuous residence since February 13, 2001 and continuous physical presence from March 9, 2001 to the filing date of the TPS application. Therefore, the application must be denied for these reasons as well.

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.