U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 10 2009
[EAC 02 249 50896]

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 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).

for John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The approval of the applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The application is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a citizen and national 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 on July 24, 2002. The Director, Vermont Service Center, approved that application on October 22, 2002.

The director withdrew the applicant's TPS on August 25, 2008, after determining that the applicant failed to establish her qualifying continuous residence and continuous physical presence in the United States. The director noted in his decision that Service records revealed that the applicant did not enter the United States until August 18, 2001. In addition, the director noted in his decision that the applicant is inadmissible to the United States based on her willful misrepresentation of a material fact regarding her claim of entry into the United States on January 10, 2001.

Sec. 244.14 Withdrawal of Temporary Protected Status.

> (a) Authority of director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
>
> > (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status; ...

On appeal, the applicant, through counsel, states that she entered the United States on August 18, 2001, as a B-2 visitor. Furthermore, the applicant admits that she indicated on her TPS application that she entered the United States on January 10, 2001, "without inspection at an unspecified location in Houston, Texas." The applicant asserts that the misstatement of the date of entry was an "innocent mistake" and was not willful, intentional or deliberate, because she relied on a "friend" to complete the application. Counsel argues that the applicant signed the application in "good faith." Moreover, counsel states that the applicant has been continuously present in the United States since September 2001.

Section 212(a)(6)(C)(i) of the Act states, in part:

> 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.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2010, 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 U.S. 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 applicant asserts, on appeal, that she innocently made a mistake on her TPS application by stating her date of entry into the United States as January 10, 2001. However, the record reflects that in addition to her initial TPS application signed on July 17, 2002, the applicant also claimed on subsequent TPS re-registration applications signed on October 3, 2002, August 28, 2003, February 15, 2005, June 5, 2006, and August 22, 2007, as well as on the accompanying Form I-765 Application(s) for Employment Authorization, that she had entered the United States on January 10, 2001. The applicant signed each of the application forms certifying that the information submitted was true and correct. Therefore, the applicant remains inadmissible to the United States because of her misrepresentation.

The records of USCIS reflect that the applicant was admitted to the United States on August 18, 2001, as a non-immigrant visitor. Therefore, the applicant could not have met the requirements that she had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. She has, thereby, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Therefore, the director's decision to withdraw the applicant's TPS status will be affirmed, and the applicant remains ineligible for TPS.

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.