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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



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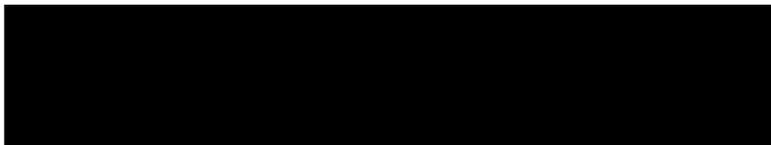


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUL 06 2010

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 determined that the applicant failed to maintain his: 1) continuous residence in the United States since February 13, 2001; and 2) continuous physical presence in the United States since March 9, 2001. The director also determined that the applicant had failed to establish his nationality. The director, therefore, withdrew the applicant's TPS.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not eligible at the time such status was granted, or that at anytime thereafter becomes ineligible for such status. 8 C.F.R § 244.14.

On appeal, counsel for the applicant states that the director's decision to withdraw the applicant's TPS is arbitrary and capricious.

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 Secretary, Department of Homeland Security (Secretary), 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 Secretary 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 9, 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 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).

On September 19, 2007, 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, however, failed to provide any evidence of his continuous residence and continuous physical presence in the United States during the requisite periods.

The first and second issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001 and his continuous physical presence in the United States since March 9, 2001.

In support of his TPS application, the applicant submitted a copy of an El Salvadoran passport in the name of [REDACTED] issued in San Francisco on June 20, 2000, hand-written receipts from [REDACTED] dated January 8, 2001 and February 7, 2001, and an envelope addressed to [REDACTED] with indecipherable postmarks.

As stated above, the applicant was requested on September 19, 2007, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. In response, the applicant failed to submit any additional evidence to establish his continuous residence and continuous physical presence. The director concluded that the applicant had failed to establish his qualifying residence and physical presence in the United States during the requisite periods and denied the application.

On appeal, counsel states that the director's finding that the applicant failed to establish the requisite continuous residence and continuous physical presence is arbitrary and capricious and contrary to the evidence.

The passport indicates the applicant was present in the United States on June 20, 2000; the hand-written receipts purport to show that the applicant was present on those dates. However, these documents only indicate the applicant was present in the United States prior to the requisite continuous residence and continuous physical presence dates. Therefore, these documents cannot establish the applicant's continuous residence since February 13, 2001 and continuous residence from March 9, 2001 to the filing date of the TPS application. Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

The third issue in this proceeding is whether the applicant has established his nationality. The applicant filed his initial TPS application under the name of "[REDACTED]" with a birth date of May 30, 1971. On a re-registration TPS application filed September 10, 2007, the applicant listed his name as "[REDACTED]" and indicated his date of birth as January 7, 1972. On September 19, 2007, the applicant was requested to submit evidence of an identity document. The applicant was also informed in the notice that USCIS records indicated that he was born on May 30, 1971. The applicant, in response, provided copies of a passport, as well as a birth certificate, a personal identification document and an election identification document, with English translations in the name of [REDACTED] and a Form I-94, Arrival-Departure Record dated July 25, 2002, in the name of [REDACTED]. The applicant also submitted a personal statement and an additional copy of a passport in the name of [REDACTED]. The photocopied personal identification document raises questions to its credibility as it was issued in El

Salvador on January 9, 2002, during the time period the applicant claims he was residing in the United States. This discrepancy has 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).

On appeal, counsel states the applicant has provided prima facie evidence of his nationality. According to counsel, the applicant informed the director that his prior documentation was fraudulent and the admission was not made after being confronted with adverse evidence. Counsel contends that a declaration against interest is presumptively credible and the director failed to conduct a personal interview.

In his personal statement, the applicant stated that his true name is [REDACTED] that he was admitted to the United States on March 6, 1999 in San Francisco, California as a visitor.¹ According to the applicant, he gave his passport to a friend who had an entry stamp placed in his passport so that it would appear he had returned to El Salvador on March 29, 1999. The applicant states that he returned to El Salvador using a passport in the name of [REDACTED] on December 9, 2001, and was re-admitted to the United States on January 26, 2002 in San Francisco as a visitor using the passport in the name of [REDACTED]

Contrary to counsel's assertion, the applicant submitted his statement after being confronted by the notice requesting evidence of his identity. At the time the applicant filed the re-registration application under the name [REDACTED], no explanation was provided. Moreover, the applicant's explanation lacks credibility and is not plausible. The applicant has, in fact, offered no compelling explanation as to his use of fraudulent documentation. By submitting two sets of identity documents, the applicant has failed to establish his true identity and nationality.

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 does not meet the requisite qualifications to have his inadmissibility waived as the true identity of the applicant has not been credibly established. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

The TPS will be withdrawn for the above stated reasons, with each considered as an independent and alternative basis for withdrawal. An alien applying for TPS has the burden of proving that he

¹ The passport reflects that Tomas Escobar Escalante was issued a visitor's visa on May 26, 1998, and the individual was admitted into the United States on August 29, 1998, March 6, 1999 and January 26, 2002.

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.