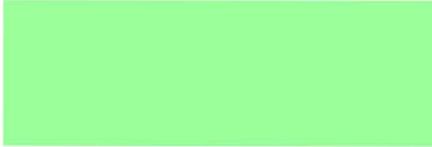


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

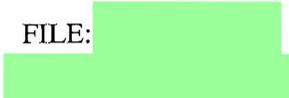


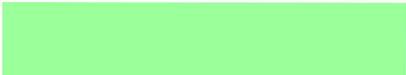
U.S. Citizenship
and Immigration
Services



DATE: **MAY 30 2014**

Office: VERMONT SERVICE CENTER

FILE: 

IN RE: Applicant: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

On May 22, 2013, the director withdrew temporary protected status because it was determined that the applicant failed to establish that he is a national of a foreign state designated by the Secretary, Department of Homeland Security (Secretary), and eligible for the granting of temporary protected status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

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 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).

Pursuant to section 244(c) of the Act, an alien who is a national of a foreign state designated under subsection (b) of this section (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c) of this section, may be granted temporary protected status (TPS) in the United States. Further, 8 C.F.R. § 244.2(a) provides that an alien who 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, may, in the discretion of the director, be granted TPS. Section 101(a)(21) of the Act defines the term "national" to mean a person owing permanent allegiance to a state.

In his Notice of Intent to Withdraw TPS issued on August 27, 2012, the director informed the applicant that USCIS records indicated that he attempted an entry without inspection and was apprehended by the U.S. Border Patrol on January 18, 1994 near San Ysidro, California; that at the time of his apprehension, he indicated his name to be [REDACTED]; and that he claimed to have been born on July 30, 1974 in Tutiapa, Guatemala. The director requested that the applicant submit evidence to establish that he is a citizen or national of El Salvador specifically, "an original El Salvadorian passport (those pages with your name, birth date, photograph, etc.); an original El Salvadoran birth certificate issued by the appropriate civil authority showing timely registration, date and place of birth, and parents' names; or an original El Salvadoran National Identification Card."

The applicant complied with the director's request and submitted an original El Salvadoran passport and an original El Salvadoran birth certificate with English translation.

Citing 8 C.F.R. § 244.9(a)(1), and *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), the director, in denying the application, determined that the documents submitted in response to the notice did not satisfactorily establish the applicant's nationality and identity. The director concluded that the documents were merely his own statements and were not validated based on documentary evidence.

The decision, however, lacks specificity as it did not address why the requested documents were not sufficient to resolve the inconsistencies in the record.

On appeal, counsel provides English translations of the applicant's El Salvadoran baptism record and an El Salvadoran birth certificate of the applicant's mother. Counsel also provides a declaration from the applicant, who indicated, in pertinent part, that at the time of his entry into the United States in 1994 "I was fleeing a war situation, and I used documents using a different name, and the last thing I wanted was to be caught and deported back to El Salvador." The applicant indicated that he had a fake cedula from Guatemala because he and his family were employed in Guatemala and needed papers to be able to work; that he is not Guatemalan and never had a Guatemalan passport; and that in 1994 he was very nervous and thought "it would be better just to stick with the name that was on those papers. I did not want to cause more problems by saying that those papers were not mine."

The regulation at 8 C.F.R. § 244.9(a)(1) provides that each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity of nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of original bearing photo and/or fingerprint.

The AAO has considered the applicant's explanation of the circumstances surrounding his prior claim to be a national of Guatemalan. Also, as noted above, the record includes documentation, including the applicant's El Salvadoran birth certificate, and passport. The applicant has provided independent objective evidence which meet the regulatory requirement as described in 8 C.F.R. § 244.9(a)(1) in establishing nationality and identity. The AAO concludes that the applicant's explanation and documentation of record are sufficient to establish his nationality as an El Salvadoran. Therefore, the director's decision to withdraw the applicant's TPS will, itself, be withdrawn, and TPS reinstated.

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 met this burden.

ORDER: The appeal is sustained.