



U.S. Citizenship
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Services

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JUL 13 2007

FILE:

[REDACTED]
[EAC 01 242 54219]

Office: VERMONT SERVICE CENTER

Date:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel states that the applicant has credible evidence to establish his eligibility for TPS. Additional documentation has been submitted in support of the appeal.

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 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence 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 valid until September 9, 2007, 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 CIS. 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 filed his Form I-821, Application for Temporary Protected Status, on August 3, 2001. The application was denied on July 31, 2002, because the applicant failed to overcome the grounds for denial. The applicant was given 30 days to file an appeal. The applicant filed an appeal on September 2, 2003.

On appeal, the AAO determined that the director's decision did not provide the applicant with the specific reason for the denial of the application, pursuant to 8 C.F.R. § 103.3. On November 1, 2004, the AAO withdrew the director's decision and remanded the case for entry of a new decision.

In a decision dated February 22, 2005, the director again denied the application finding that three affidavits from acquaintances submitted by the applicant in support of his application were not sufficient in establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant was given 30 days to file an appeal from that decision.

Counsel filed an appeal on behalf of the applicant on March 23, 2005.

On appeal, counsel contends that the applicant has submitted credible evidence to establish that he has been continuously present in the United States since December 2000. In support of the appeal, counsel submits: a copy of a letter dated March 20, 2005, from [REDACTED] of the Juda Mount of Sion Church, stating that the applicant had been a member of the church since December 2000; a letter dated March 17, 2005, from [REDACTED] stating that he and the applicant lived together from December 10, 2000, to March 2002; and, a letter dated March 17, 2005, from [REDACTED] stating that she had known the applicant since he arrived in the United States in December of 2000, and that he has not left the United States since that time. Counsel also submits documentation relating to the identity of each affiant.

The applicant claims to have lived in the United States since January 2001. It is reasonable to expect that he would have a variety of contemporaneous documentation to support that claim. The letter from Pastor Elias has little evidentiary weight or probative value as it does not provide the specific date that the applicant was officially registered as a parishioner at his church, nor the applicant's address during the period of his membership. Furthermore, affidavits from acquaintances are not, by themselves, persuasive evidence of residence or physical presence.

It is also noted that although the affiants attest that the applicant has been in the United States since December 2000, the applicant has consistently claimed on documentation submitted to CIS that he entered the United States without inspection on an unspecified date in January 2001. These discrepancies in the applicant's submissions have not been explained and call into question the applicant's ability to document the requirements under the statute and regulations. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence; any attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

It is concluded that the applicant has not submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be denied for this reason.

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 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 failed to meet this burden.

ORDER: The appeal is dismissed.