U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21964070

Date: JUN. 15, 2022

Appeal of Vermont Service Center Decision

Application: Form I-821, Application for Temporary Protected Status

The Applicant, a native and citizen of El Salvador, seeks review of a decision denying his re-registration and withdrawing his Temporary Protected Status (TPS). *See* Immigration and Nationality Act (the Act) section 244, 8 U.S.C. § 1254a. The Director may withdraw TPS if an applicant was not in fact eligible at the time it was granted or if an applicant later becomes ineligible. 8 C.F.R. § 244.14(a)(1).

The Director of the Vermont Service Center concluded that the Petitioner was not eligible when granted TPS because the record demonstrated he was not in the United States at the requisite time, as he claimed. On appeal, the Applicant asserts that the Director erred as he was in the United States and eligible when he initially filed for TPS. Upon *de novo* review, we will dismiss the appeal.

I. LAW

DHS regulations, implementing the provisions of section 244 of the Act, 8 U.S.C. § 1254a, provide that an applicant who is a national of a foreign state designated by the Secretary of Homeland Security is eligible for TPS if the applicant establishes, among other criteria, that the applicant has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state and has continuously resided in the United States since a date designated by the Secretary. 8 C.F.R. § 244.2. On March 9, 2001, the Secretary of Homeland Security designated El Salvador for TPS. Department of Homeland Security (DHS) regulations provide that an applicant who is a national of a foreign state so designated must register for TPS during the initial registration period announced by public notice in the Federal Register. 8 C.F.R. § 244.2(f)(1). To meet the initial registration requirements, Salvadoran nationals must have applied for TPS during the initial registration period, March 9, 2001, through September 9, 2002. Individuals applying for TPS offered to Salvadorans must also demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.[1]

Continuously physically present means "actual physical presence in the United States for the entire period specified in the regulations," but an applicant shall not be considered to have failed to maintain continuous physical presence because of "brief, casual, and innocent absences." 8 C.F.R. § 244.1. *Continuously*

[1] *Designation of El Salvador Under Temporary Protected Status Program*, 66 Fed. Reg. 14214 (Mar. 9, 2001).

resided means "residing in the United States for the entire period specified in the regulations," but an applicant shall not be considered to have failed to maintain continuous residence "because of a brief, casual and innocent absence . . . or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the [applicant]." 8 C.F.R. § 244.1.

The burden of proof is on the Applicant to demonstrate eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). 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. 8 C.F.R. § 244.9(b). To meet the burden of proof, the Applicant must provide supporting documentary evidence of eligibility apart from the Applicant's own statements. *Id.*

II. ANALYSIS

The record shows that the Applicant was initially granted TPS in 2003 and has applied for re-registration. In September 2020, the Director issued the Applicant a notice of intent to deny (NOID) his re-registration application and withdraw approval of TPS as he appeared ineligible. The Director noted that on August 28, 2002, the Applicant initially filed to register for TPS and included a money transfer dated June 1, 2002, as evidence of his residence and physical presence in the United States, and he was granted TPS in December 2003. The Director determined, however, that a criminal history check revealed that on [redacted] 2002, the Applicant was apprehended by Border Patrol agents of the then-Immigration and Naturalization Service, provided a different name and date of birth, and informed them he had departed his home in El Salvador on June 10, 2002. The Director concluded that the apprehension called into question evidence submitted with the Applicant's initial application and his eligibility for TPS; specifically, whether he was physically present in the United States since 2001, as claimed. In the NOID the Director requested the Applicant provide original documents for seven money transfers and three affidavits submitted with the initial filing, or if the Applicant was claiming that he had previously been in the United States and returned after a brief departure without prior approval, to explain the purpose and duration of his absence to establish it was brief, casual, and innocent.

In response to the NOID, the Applicant, through counsel, explained that he was mourning the death of a close friend in El Salvador and was briefly absent from the United States as he departed July 10, 2002, and arrived in El Salvador July 15, 2002, to attend the funeral. He submitted a death certificate for a 42-year-old individual who died in El Salvador on July 9, 2002. The Applicant claimed that when he was apprehended on [redacted] 2002, he did not understand the question from the agent about his departure date. The Applicant stated that with his response to the NOID he was submitting the three original affidavits from his initial filing, but that the original money transfer documents had since been misplaced, but he obtained copies through a FOIA request. He also provided letters from his mother and his father claiming they were in El Salvador at the time and that the Applicant arrived there on July 15, 2002, because of his friend's emergency. The Applicant submitted letters from two friends in El Salvador who claimed that he arrived there July 15, 2002, for a funeral and departed August 5, 2002, and letters from two friends in the United States who stated that the Applicant departed the United States on July 10, 2002, due to a friend's accident. With the response the Applicant submitted evidence from his initial TPS filing including an undated letter from a church pastor stating

that he had been a member since February 2001; an August 2002 letter from an individual claiming he rented a room to the Applicant since 2001; a November 2003 letter from a coworker stating that he had seen the Applicant since 2001; and eight copies of money transfers dated between February 2001 and August 2002.

In withdrawing the Applicant's TPS, the Director concluded that the name discrepancy called into question all evidence submitted with the initial filing and found it unreasonable that the Applicant did not have original documents from his initial filing when he claimed to have three original affidavits. The Director went on to determine that one affidavit was a copy and that the two others differed from those in the administrative record. The Director concluded that because of the Applicant's [redacted] 2002 apprehension the evidence he submitted from his initial filing did not overcome the decision to withdraw his TPS. The Director further determined that the death certificate and affidavits provided in response to the NOID were not sufficient to corroborate the claim about his departure and that he presented no historical documentation in support. The Director surmised the probative evidence reflected that the Applicant first entered the United States on [redacted] 2002, and filed for TPS August 28, 2002, and that he had no prior attempt to file for TPS even though claiming to reside in the United States since February 2001. The Director further determined that affidavits and copies of documents on record did not overcome the request for originals.

On appeal, the Applicant maintains, through counsel, that he arrived in United States in 2001, left around July 10, 2002, for a funeral in El Salvador, and returned [redacted] 2002. He states that when apprehended he gave another name and that USCIS was able to confirm both names were the same person, and he argues it was reasonable to use an alias at that time as he did not feel safe at the border. He contends that in response to the NOID he submitted an original letter from a church where he had been a member since February 2001, that it is not reasonable to expect him to have original money transfer documents from 19 years ago, and that he explained his 30-day departure was brief and innocent.

The Applicant's arguments on appeal do not overcome the basis of the Director's decision and demonstrate his eligibility for TPS. The Applicant concedes he provided a different name to Border Patrol agents on [redacted] 2002, and used his own name when filing for TPS on August 28, 2002. However, his contention that he used an alias upon apprehension out of fear for his safety does not sufficiently address the Director's determination that he actually entered the United States later than the date he claimed when initially registering for TPS and that he was therefore ineligible at the time. We acknowledge the Applicant's contention that he does not have original documentation after so many years; however, it is his burden to show continued eligibility for TPS, and here, he has not provided argument or submitted evidence on appeal to sufficiently address the deficiencies identified in the Director's decision.

As the Applicant has not met his burden to demonstrate his eligibility by a preponderance of evidence, we will affirm the Director's decision.

ORDER: The appeal is dismissed.