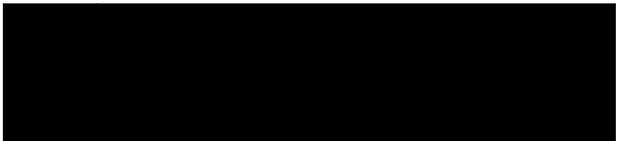


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invasion of personal privacy**

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

ADMINISTRATIVE APPEALS OFFICE
CIS, 10, 20 Mass, 3/F
425 Street, N.W.
Washington, D.C. 20536



NOV 07 2003

FILE: [Redacted]
WAC 02 112 52569

Office: California 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: Self-represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy N. Gomeny for
Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is 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. § 1254a.

The director determined that the applicant failed to submit sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant asserts that he arrived in the United States on September 25, 2002 [the Form I-821 application indicates entry on September 25, 2000] and overstayed. He further asserts that he later departed from the United States on April 2, 2002 and reentered on July 2, 2002. The applicant states that this departure was a brief, innocent and casual departure.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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.

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 and since February 13, 2001. 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.

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 and since March 9, 2001. 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 *brief, casual, and innocent absence* as used in 8 C.F.R. § 244.1 means a departure from the United States that satisfies the following criteria:

(1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

The director determined that the evidence furnished by the applicant was not sufficient to establish eligibility because he did not arrive in the United States on or before February 13, 2001 and continuously resided in the United States. Nor did he maintain continuous physical presence since March 9, 2001.

While the applicant claims that he departed from the United States on April 2, 2002 and reentered on July 2, 2002, the records of the Service reflect that the applicant was admitted to the United States on September 25, 2000 as a B-2 nonimmigrant visitor. He departed from the United States on January 29, 2001, and was readmitted to the United States as a B-2 nonimmigrant visitor on July 9, 2001. Based on this information, it can not be held that the applicant's almost six-month absence was brief, casual, and innocent. Furthermore, the applicant neither furnished evidence nor addressed or explained the purposes of his absence from the United States.

It is concluded that the applicant has failed to establish that he met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c).

The burden of proof is upon the applicant to establish that he 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.