



U.S. Citizenship  
and Immigration  
Services

MM

[Redacted]

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 14 2008

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 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, Director  
Administrative Appeals Office

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**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. § 1254.

The director denied the application because: 1) the applicant failed to establish his continuous residence in the United States since February 13, 2001; 2) the applicant failed to establish his continuous physical presence in the United States since March 9, 2001; 3) the applicant failed to provide proof of identity; and, 4) because the applicant failed to appear to be fingerprinted.

On appeal, the applicant submits a statement and additional evidence.

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 is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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 phrase continuously physically present, as defined 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 phrase continuously resided, as defined 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.

The phrase brief, casual, and innocent absence, as defined 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.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 Citizenship and Immigration Services (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 first issue raised by the director is whether the applicant has established continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The applicant submitted the following evidence in an attempt continuous residence and physical presence in the United States with the Form I-821, Application for Temporary Protected Status:

1. a Kaiser Permanente medical appointment notice dated April 2, 2001;
2. an earnings statement from Pacific Valley Investors in Belmont, California, reflecting work performed by [REDACTED] social security number 654-08-2211, during the pay period from November 16, 2000 to November 30, 2000; and,
3. a prescription receipt from Walgreens pharmacy in Hayward, California, dated February 4, 2001.

On February 25, 2003, the applicant was requested to submit evidence establishing his physical presence in the United States since March 9, 2001. The applicant was also requested to provide proof of identity. The applicant, in response, stated that he needed additional time to get a passport from the Salvadoran Embassy. However, he did not submit any additional evidence of physical presence or identity.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on August 9, 2003.

On appeal, the applicant submits the following evidence in an attempt to establish his continuous physical presence and residence in the United States during the requisite periods:

1. earnings statements from Pacific Valley Investors showing work performed by David Villalta, social security number 654-08-2211, during the pay periods from December 1, 2000 to December 15, 2000, and from August 16, 2003 to August 31, 2003; and,
2. a Western Union money transfer receipt indicating that the applicant transferred \$75 to El Salvador on August 25, 2000.

The applicant has submitted only three documents to establish continuous residence and physical presence in the United States during the requisite periods: two medical receipts dated April 2, 2001 and February 4, 2001, respectively; and, one earnings statement for the pay period from August 15, 2003 to August 31, 2003. The applicant has not submitted any evidence of continuous residence or physical presence in the United States from February 13, 2001 to April 2, 2001. Further, he has not submitted any evidence of continuous residence or physical presence in 2002. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c), and the application must be denied for this reason.

The second issue raised by the director is that the applicant has failed to provide evidence of identity.

As previously stated, the applicant was requested on February 25, 2003, to provide proof of identity. In response, he stated that he was attempting to get a new passport from the Salvadoran Embassy.

The director denied the application because the applicant had failed to submit evidence of identity.

On appeal, the applicant states that he attempted to get a new Salvadoran passport from the Salvadoran Embassy, but he has to get a new copy of his birth certificate in order to get a passport. The applicant failed to provide a document to establish identity, and the application also must be denied for this reason.

The final issue raised by the director is whether the applicant appeared to be fingerprinted as required.

On November 26, 2002, a Form I-797-C, Fingerprint Notification, was sent to the applicant at his address of record instructing him to appear at an adjudication support center in San Jose, California, to be fingerprinted on January 10, 2003. There is no indication in the record that the notice was returned to Citizenship and Immigration Services (CIS) as undeliverable mail. The applicant failed to appear for his appointment to be fingerprinted, or to request that his fingerprint appointment be rescheduled. Therefore, the application must be denied for this reason as well.

The applicant has not established his eligibility for TPS. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status 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.