



U.S. Citizenship
and Immigration
Services

MI

[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

JUL 30 2004

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:

[REDACTED]

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

DISCUSSION: The application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted; the prior decision of the AAO will be affirmed.

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 the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, counsel submitted a brief and additional evidence.

The director of the AAO dismissed the appeal, finding that the applicant had not submitted sufficient evidence to overcome the grounds for denial of the application.

On motion, counsel submits a brief 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 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, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (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. 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 applicant submitted the following evidence with the initial Form I-821, Application for Temporary Protected Status:

1. a remittance receipt from Banco Agricola Comercial in Huntington Park, California, for money sent to El Salvador by the applicant on November 20, 2000;
2. two remittance receipts from gigante express in Miami, Florida, for money transferred to El Salvador by the applicant on October 21, 2000 and December 16, 2000; and,
3. an interim driver's license issued to the applicant by the State of California on September 22, 2000, with an expiration date of November 20, 2000.

On April 19, 2002, the applicant was requested to submit evidence establishing his residence in the United States since February 13, 2001, and physical presence in the United States since March 9, 2001. The applicant, in response, provided:

1. a "nonpayment cancellation notice" from [REDACTED] automobile insurance company dated February 18, 2002 ;
2. a remittance receipt from [REDACTED] for money sent to El Salvador by the applicant on September 17, 2001; and,
3. a remittance receipt from gigante express for money transferred to El Salvador by the applicant on January 27, 2002.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on September 11, 2002.

On appeal, counsel asserted that the applicant had submitted sufficient evidence to establish continuous residence and physical presence in the United States during the requisite periods and submitted the following evidence in support of his assertion:

1. remittance receipt from [REDACTED] for money transferred to El Salvador by the applicant on August 30, 2000, October 21, 2000, and January 15, 2001;
2. an automobile insurance policy statement from [REDACTED] dated July 25, 2001; and,
3. three "nonpayment cancellation notices" from [REDACTED] dated October 18, November 18, and December 18, 2001.

The director of the AAO dismissed the appeal on April 29, 2003, after finding that the applicant had not submitted sufficient evidence to overcome the grounds for denial of the application.

On motion, counsel reiterates the applicant's claim of qualifying continuous residence and physical presence in the United States during the requisite periods, and submits two affidavits. [REDACTED] who identifies himself as the applicant's grandfather, states that the applicant has lived in California since July 16, 2000. [REDACTED] who identifies himself as the applicant's uncle, states that the applicant has lived in California since July 16, 2000. These affidavits, in the absence of other, contemporaneous evidence, are not sufficient to overcome the basis for the denial of the application.

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). 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 prior decision of the AAO dated April 29, 2003, is affirmed. The appeal is dismissed.