



U.S. Citizenship
and Immigration
Services

VAI



FILE: [Redacted] Office: Nebraska Service Center Date: SEP 01 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: 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

for Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

~~PUBLIC COPY~~

DISCUSSION: The application was denied by the Director, Nebraska 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 the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant stated that he had submitted all the necessary documents by regular mail.

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.

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).

Along with his application, the applicant submitted the following documentation:

1. Copies of his El Salvadoran birth certificate along with an English translation.
2. A copy of his Kansas state identification card issued on December 11, 1998, bearing the expiration date of October 16, 2000.
3. A copy of Form 1099-MISC, Miscellaneous Income, reflecting the applicant's 2000 non-employee compensation from Advanced Contracting, Inc.
4. A copy of the applicant's Earnings Statement from Konrady's Lawn and Landscaping, Inc., dated July 21, 1999.
5. A copy of the applicant's Earnings Statement from Trac Staff, indicating a check date of November 26, 1998.
6. A copy of the applicant's Earnings Statement from Kansas City Automobile Auction, reflecting a pay date of February 11, 2000.

On January 31, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on July 1, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

7. A letter from Mr. Jong S. Kim, President of JYD Enterprises, Inc., stating that the applicant had paid \$150.00 every two weeks from August 25, 2000 to June 3, 2002 for a vehicle that he had purchased.
8. A letter from Ms. Berta Tobar, who stated that the applicant worked for her from October 2000 to July 2002, and earned \$40 per week.
9. A copy of a bill from the Municipal Court in Kansas City, Missouri dated June 15, 2001.
10. A copy of a Personal Property Tax Statement for the year 2002 for his vehicle.
11. Copies of his Form W-2, Wage and Tax Statements, reflecting the applicant's 1998 through 2003 income from various employers.

The statements provided by Mr. Kim and Ms. Tobar in Nos. 7 and 8 above, are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these statements, such as payment receipts or cancelled checks. The tax documentation as detailed in No. 11 above indicates that the applicant was in the United States during the year 2001. However, the burden is on the applicant to establish his residence since February 13, 2001.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001, or his physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

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.