



U.S. Citizenship
and Immigration
Services

MAI

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date **SEP 15 2004**

[LIN 04 244 50965]

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

Robert P. Wiemann, Director
Administrative Appeals Office

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**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 determined that 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. The director, therefore, denied the application.

On appeal, counsel submits a brief and additional evidence. It is noted that on September 8, 2004, counsel requested an additional 30 days within which to submit additional evidence, but that additional evidence was submitted, by telefax, on September 8, 2004. Therefore, the record shall be considered complete.

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 as 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 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. 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 *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. 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.

A *brief, casual, and innocent absence*, as cited 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 purposes(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 entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 applicant's initial Form I-821, Application for Temporary Protected Status, was signed by the applicant on June 21, 2002, and received by CIS on May 8, 2002. That application was denied on February 7, 2003, because the applicant did not submit sufficient evidence of his continuous physical presence and continuous residence. The record contains no appeal filed by the applicant in response to that determination.

It is noted that on the initial application, the applicant, under penalty of perjury, indicated that he had entered the United States in February of 1999. However, a copy of his passport, submitted as evidence of his nationality and identity, indicates that the passport was not issued to him until December 15, 1999, in El Salvador. It also is noted that, in Part 4 of the Form I-821, the applicant certified, again under penalty, that he had never been arrested (section d.) or excluded and deported (section h.) from the United States. However, the record indicates that the applicant was first apprehended by the U.S. Border Patrol, at Tucson, Arizona, on January 22, 2000, and placed

into removal proceedings. The applicant was ordered removed from the United States, in absentia, on May 9, 2000, under [REDACTED]

The current TPS application was properly filed with CIS on August 31, 2004. In this application, the applicant indicated that he had entered the United States in January 2000, and that he had been in immigration proceedings in Arizona in 2000. The director found that the applicant had submitted insufficient evidence of his continuous physical presence and continuous residence for the requisite periods. In his decision, the director identified all evidence submitted and acknowledged that the applicant had been in the United States in early 2000. The director, however, found that there was insufficient evidence of the applicant's continuous physical presence and continuous residence from February 13, 2001, and March 9, 2001, respectively. Specifically, the director stated:

The applicant has submitted no evidence whatsoever of residence and presence for the year 2001 or to the date of filing his initial I-821 on May 8, 2002 –a gap period of the first fifteen months of the registration period.

On appeal, counsel for the applicant submits additional evidence, including a marriage certificate indicating that the applicant married in Colorado initially in April 2002. As discussed by the director, the four generic rent receipts included in the record, and re-submitted on appeal, only include the last name of [REDACTED] on two of the receipts, and are dated, "9/3/02, 9-27-2002, 11/1/2002/ and 12/1/02" [with the 19-- scratched through on the receipts]. These indicate a notation of "DVE 102AA" or "DE 102AA" in the address block. Additional pay receipts for the years 2003 and 2004 are included on appeal, as well as duplicates of material already reviewed by the director before rendering his decision.

The applicant has not presented sufficient evidence to establish his continuous residence since February 13, 2001, and his continuous physical presence from March 9, 2001, in the United States. Although the applicant has now demonstrated his presence in the United States in April 2002, he has failed to establish that he has met the criteria for continuous residence and continuous physical presence for El Salvadorans, as 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 appeal is dismissed.