

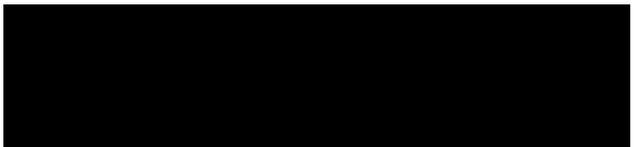


U.S. Citizenship
and Immigration
Services

Identifying areas deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

MA



FILE: [REDACTED]
[EAC 02 233 52347]

Office: VERMONT SERVICE CENTER

Date: AUG 01 2005

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

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

The applicant is stated to be 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 that 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, the applicant submits a letter and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 244.3;
- (e) Is not ineligible under § 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.

- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

In connection with his initial Form I-821, Application for Temporary Protected Status, filed on July 2, 2002, the applicant was required to appear for fingerprinting. As a result of being fingerprinted, CIS received a report indicating that the applicant had been arrested, on October 9, 1999, in Washington, D.C., and charged with one count of "Cocaine Crack Controlled Substance Act Possession."

On April 1, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was also requested to submit evidence of the court disposition of his prior arrest. In response, the applicant submitted:

1. Documentation indicating that the above-noted charge against him was dismissed on January 26, 2001;
2. A photocopy of his El Salvadoran birth certificate, with English translation;
3. Photocopies of earnings statement from Eagle Management Systems, Inc., for the two-week pay periods ending on July 15, 1999; July 31, 1999; August 15, 1999; February 15, 2000; and, June 15, 2000;
4. A photocopy of an earnings statement from Keener Management, Inc., for the pay period ending on December 9, 2001;
5. A photocopy of an earnings statement from 330, Inc., D/B/A The Gregory, dated December 28, 2001; and,
6. An earnings statement dated December 22, 2001, from an un-named employer;

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence and denied the application on September 10, 2003.

On appeal, the applicant submits photocopies of the following additional documentation:

7. A Service Employees International Union (SEIU) Health and Welfare Fund card, with an effective date of March 1, 2002;
8. Earnings statements from Associated Building Maintenance Co., Inc., for the two-week pay periods ending on February 28, 2002; March 31, 2002; April 30, 2002; and, July 15, 2002;
9. Earnings statements from EMS, for the two-week pay periods ending on April 13, 2002; April 27, 2002; and, August 3, 2002;
10. An earnings statement from Eagle Management Systems, Inc., for the two-week pay period ending on August 15, 1999;
11. An earnings statement dated March 30, 2002, from an un-named employer;
12. An earnings statement from EMS that is not dated; and,
13. A receipt from Gigante Express, Miami, Florida, dated February 6, 2002.

The applicant claims to have lived in the United States since July 24, 1994. It is reasonable to assume that he would have a variety of objective contemporaneous evidence to support this claim. The applicant has primarily submitted photocopies of earnings statements in support of his application. These statements indicate that the

applicant was present in the United States in July and August 1999; February and June 2000; and from December 2001 to the date of filing his application. The applicant has not submitted any documentation dating from June 2000 to December 2001, other than that relating to the dismissal of the charge against him. On appeal, the applicant states that he cannot find his medical documentation to establish that he was in and out of the hospital during most of 2001.

It is concluded that the applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, to the date of filing his application on July 2, 2002. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, the applicant has not submitted an identity document bearing his photograph and/or fingerprint, as required under the provisions of 8 C.F.R. § 299.9(a)(1)(ii) and (iii). Therefore, the application may also not be approved for this reason.

It is noted that CIS records reflect that the applicant was ordered removed from the United States by an immigration judge on November 5, 1998, under case [REDACTED]

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.