



U.S. Citizenship
and Immigration
Services

identity data derived to
prevent identity theft and protect
invasion of personal privacy

[REDACTED]

MI

FILE:

[REDACTED]

OFFICE: LOS ANGELES

DATE: AUG 23 2005

[WAC 02 129 53149]

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

DISCUSSION: The application was denied by the District Director, Los Angeles, 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 district director denied the application because the applicant failed to establish he had resided in the United States since February 13, 2001.

On appeal, counsel for the applicant asserts that the denial of his client's application was in error, having been based on an incorrect determination regarding the applicant's "last" date of entry.

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 TPS 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. An extension of the designation for El Salvadorans TPS was granted by the Attorney General through 2003. Subsequent extensions have been granted by the Secretary of the Department of Homeland Security, with the latest extension valid 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 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).

On March 15, 2004, the director denied the application. The district director's determination was based on the applicant's failure to demonstrate that he had continuously resided in the United States since February 13, 2001. Specifically, the record of proceedings includes a statement by the applicant signed under oath during an interview conducted by an Immigration and Naturalization Service (now, CIS) officer to determine his eligibility for TPS. In this statement, the applicant acknowledges that he first entered the United States in June 2001. It is

noted that the record also contains a Warrant for Arrest of Alien, Form I-200, dated November 20, 2002, which specifies that the applicant entered the United States at or near Douglas, Arizona, in June 2001.

On appeal, counsel asserts that the applicant had actually entered the United States prior to February 13, 2001, and that his entry of June 2001 was not his initial entry but merely his last date of entry. Counsel states, in pertinent part, that "a brief interruption in physical presence should not preclude [redacted] [sic] from satisfying the statutory requirement of continuous physical presence for the purpose of TPS." However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Further, counsel has not provided any explanation or evidence of how the alleged departure from the United States and subsequent return stemmed from a "brief, casual, and innocent" event. Moreover, there is little room for ambiguity or misinterpretation in the applicant's sworn statement that he "entered the United States for the first time in June 2001." [emphasis added]

The applicant has not submitted sufficient credible evidence to establish his having continuously resided in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the district director's decision to deny the application for TPS will be affirmed.

Beyond the decision of the district director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. Therefore, the applicant has not established eligibility under 8 C.F.R. § 244.2(b), and the application also cannot be approved for this reason.

Additionally, the Federal Bureau of Investigation fingerprint results report shows that on November 15, 2002, in Norwalk, California, the applicant was arrested for "RAPE BY FORCE/FEAR/ETC." The final court disposition of this arrest is not contained in the record. CIS must address this arrest and/or conviction in any future decisions or proceedings.

It is noted that the applicant's removal proceeding was ordered to be re-calendared on May 19, 2004. It must also be noted that various statements incorrectly attribute the category "A12" to a permanent resident status; "A-12" is the approval category for TPS under 8 C.F.R. § 274a.

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.