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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

[Redacted]

MI

FILE: [Redacted] Office: Texas Service Center Date: JUL 11 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:

[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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. A subsequent appeal was dismissed by the Director, Administrative Appeals Office. The matter is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion to reopen will be granted and 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 on September 19, 2002, because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

A subsequent appeal from the director's decision was dismissed on April 1, 2003, after the Director of the AAO also concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. On May 6, 2003, counsel, on behalf of the applicant, submitted a motion to reopen.

On motion to reopen, counsel provides some evidence in an attempt to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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 entry on or prior to February 13, 2001, 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 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 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 the motion, counsel provides the following documentation: a copy of the applicant's Arkansas Drivers License issued on December 14, 2001; an affidavit from the applicant dated April 29, 2003, an affidavit dated April 29, 2003, from [REDACTED] who stated that the applicant has resided in the United States since October 2000; copies of envelopes addressed to the applicant in the United States postmarked April 21, 2001, "March 23, 200", and "November 28, 200"; a copy of a receipt dated November 26, 2000, from Urgente Express; a copy of an Applicant Information Worksheet dated September 19, 2001; a copy of a printout from the Social Security Administration dated August 20, 2001; a copy of a receipt for application for a Social Security Card from the Social Security Administration dated August 20, 2001; copies of receipts for his auto insurance payments from Best Stop Insurance dated December 9, 2002 and November 11, 2002; copies of receipts from Urgente Express dated July 13, 2002, November 17, 2002, December 14, 2002, and March 8, 2003; copies of telephone billing statements, accompanied by payment receipts, dated May 2, 2002, June 2, 2002, August 2, 2002, December 2, 2002, January 2, 2003, March 22, 2003, April 2, 2003; a copy of a letter from [REDACTED] indicating that the applicant had been a client since November 26, 2000; copies of the applicant's English examinations dated August 10, 2002 and October 24, 2002; copies of the applicant's billing statements from Cricket Comfortable Wireless dated July 2, 2002 and November 2, 2002; a copy of an affidavit dated October 14, 2002, from [REDACTED] who stated the applicant had resided in the United States since October 2000; copies of receipt notices from the Service dated October 30, 2002 and October 23, 2002; a letter from [REDACTED] Llc. indicating that the applicant had been a client since November 26, 2000; and a letter dated April 22, 2003, from [REDACTED] Pastor of the Iglesia [REDACTED] who stated that the applicant has been a member of his church since September 2001.

The copy of the receipt from Urgente Express dated November 26, 2001, pre-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States by over two months. In particular, there is a gap in the evidence between November 26, 2000 and April 21, 2001. The remaining evidence all post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States by over one month. It is noted that only one of the postmark dates on the envelopes is legible. 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 continuous residence and continuous physical

presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Accordingly, the motion to reopen will be dismissed and the previous decision of the AAO will not be disturbed.

ORDER: The motion to reopen is dismissed. The previous decision of the AAO dated April 1, 2003, is affirmed.