

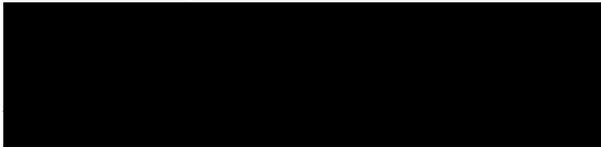
identifying areas deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JUN 02 2005
[WAC 01 205 54293]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 had failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001. The director, therefore, denied the application.

On appeal, counsel submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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.

- (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 condition described in paragraph (f)(2) of this section.

The term *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 term *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.

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 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 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 record shows that the applicant filed his TPS application on May 14, 2001. Because evidence furnished in support his application was insufficient to establish eligibility, the director denied the application on February 24, 2004.

On appeal, counsel asserts that the applicant submitted an abundance of evidence clearly establishing his continuous physical presence; however, this evidence was not considered by the director. Counsel further asserts that the applicant was never afforded an opportunity to respond to any Intent to Deny letter prior to the issuance of the denial letter, because, at a minimum the applicant should have been given an opportunity to perfect the application.

These assertions of counsel are not persuasive. The record shows that the TPS application was filed without any accompanying documentation to establish the applicant's qualifying residence or physical presence in the United States. Pursuant to 8 C.F.R. § 103.2(b)(1), an applicant or petitioner must establish eligibility for a requested immigration benefit, and an application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form.

Counsel, on appeal, submits the following:

- (1) Copies of postmarked envelopes dated November 20, 1999; January 12, 2000; March 28, 2000; and two with illegible dates.
- (2) Copies of International Courier receipts dated December 13, 1999; April 25, 2000; and May 10, 2000.
- (3) Copies of Matco Tools purchase receipts dated September 11, 2001; February 24, 2003; August 12, 2003; August 15, 2003; December 9, 2003; and December 17, 2003.
- (4) A copy of a receipt from Ontario Multispecialty dated July 17, 2002.
- (5) A copy of a receipt from an unknown vendor for "assistance medic" dated March 19, 2003.
- (6) Copies of purchase receipts from [REDACTED] dated October 6, 2003 and December 29, 2003.

Documentation furnished indicates that the applicant was present in the United States from November 1999 to May 2000 (Nos. 1 and 2 above). The remaining documents are dated only since September 11, 2001, after the filing of the TPS application.

The applicant has failed to submit any evidence to establish that he has continuously resided in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date he filed his TPS application on May 14, 2001, and as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the Federal Bureau of Investigation (FBI) fingerprint results report shows that on April 29, 2000, in Huntington Park, California, the applicant, under the name of [REDACTED] was arrested for forging an official seal. This offense could be a felony or a misdemeanor. The crime of forgery has been found to involve moral turpitude, and conviction of this crime may render the applicant ineligible for TPS under section 244(c)(2)(B)(i) of the Act, and inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. However, the actual court disposition of this offense is not contained in the record of proceeding, nor is there evidence in the record that the applicant was requested to submit the court's final dispositions of all his arrests. CIS must address this arrest in any future decisions and proceedings.

The burden of proof is upon the applicant to establish that 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.