



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 05 2006

[EAC 01 209 53124]

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.

*Cindy N. Gomez*

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 on appeal. The case will be remanded to the director for further action.

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.

On August 11, 2003, the director denied the application. The director stated that his decision was based on the denial, dated April 15, 2003, of the applicant's Form I-601, Application for Waiver of Ground of Excludability.

On appeal, counsel for the applicant states that neither she nor the applicant ever received a notice of the director's denial of the applicant's Form I-601.

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 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 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, 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 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).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on June 14, 2001. In Part 4 of the Form I-821, the applicant indicated that he has a communicable disease of public health significance, and submitted a Form I-601, Application for Waiver of Ground of Excludability. In support of his application for TPS, the applicant also submitted photocopies of the following documentation:

1. His El Salvadoran birth certificate, with English translation;
2. An account statement from MCIWorldCom, dated March 10, 2001; and,
3. An account statement from Verizon for the period November 19, 2000 through December 18, 2000.

On July 29, 2001, the Form I-601 was returned to the applicant and he was advised, in error, to file the application with an American consular office abroad. On January 28, 2002, counsel for the applicant resubmitted the Form I-601, stating that because the director was handling the applicant's TPS application, the Form I-601 should be filed with his office.

On November 22, 2002, the director requested the applicant, through counsel, to submit documentation required in connection with his Form I-601. The record reflects that the applicant failed to respond to the director's request.

The director subsequently denied the applicant's Form I-601, on April 15, 2003, without issuing a formal notice of denial to either the applicant or the applicant's counsel of record. On August 11, 2003, the director issued a notice of denial of the applicant's Form I-821, based solely on the denial of his Form I-601.

Pursuant to 8 C.F.R. 212.7(a)(3), if a Form I-601 is denied, "the applicant shall be notified of the decision, of the reasons therefore, and of the right to appeal..." In this case, the director failed to issue such notification to the applicant. Therefore, the director's decision to deny the applicant's Form I-821 will be withdrawn.

It is noted that, beyond the decision of the director, the applicant has not submitted sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c).

Based on the above discussion, the case will be remanded to the director for consideration and discussion of all issues pertinent to this case. The director also may request any additional evidence he considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

It is noted that another alien registration file, [REDACTED] pertains to the applicant. That file reflects that the applicant was apprehended near Douglas, Arizona, on January 8, 1991, while attempting to enter the United States without inspection. On February 28, 1991, the applicant failed to appear at a deportation proceeding in New York, New York, and the immigration judge administratively closed the proceeding.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The case is remanded for further action in accordance with the foregoing and for entry of a new decision.