

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M₁

[REDACTED]

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: DEC 28 2007
[SRC 02 075 54427]

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 California Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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.

The director denied the application because the applicant had failed to submit sufficient evidence to establish continuous physical presence in the United States from March 9, 2001, to the date of filing the application.

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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 the latest extension valid until March 9, 2009, 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 initial TPS application on January 3, 2002. In a notice of intent to deny dated January 9, 2003, the applicant was requested to submit evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. Because the applicant, in response, failed to submit evidence of continuous physical presence since March 9, 2001, the director denied the application on March 25, 2003.

On October 1, 2003, counsel filed an appeal from the denial decision. He requests that the appeal or motion to reopen be accepted, and submits additional evidence to establish the applicant's continuous physical presence during the requisite period. It is noted that the applicant's appeal was received more than the required 30 days after the issuance of the director's decision.

However, the record of proceeding contains a "Notice of Approval of Temporary Protected Status (Form 821) & Employment Authorization (Form I-765)" dated February 18, 2004, from the Interim District Director, New Orleans, Louisiana (Memphis), advising the applicant that his TPS had been approved, and that he was authorized for employment until August 6, 2004.

It is noted, however, that no action was taken on the denial of the initial TPS application; rather, a re-registration application for TPS, filed on October 1, 2002 (no receipt number assigned), was stamped "Approved" on February 18, 2004, by the Memphis district director, and the notice approving TPS was sent to the applicant.

It is not clear whether the Memphis district director had intended to approve both the re-registration application and the initial application (SRC 02 075 54427) as CIS records indicate that the denial of the initial application has not been overcome.

Therefore, the case will be remanded and the director shall review all records pertaining to this applicant and issue a new decision. The director may request any evidence deemed necessary to assist with the determination of the applicant's eligibility for TPS.

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 case is remanded to the director for further action consistent with the above.