U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

PUBLIC COPY
identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

M1

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 21 2004

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: Self-represented

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a native 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 applicant indicated on his application that he is a native and citizen of El Salvador and that he entered the United States without a lawful admission or parole in March 1984. The director denied the application for TPS because the applicant failed to establish he is a citizen of El Salvador. The director also determined that the applicant had failed to submit sufficient evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. Finally, the director determined that the applicant was ineligible because he failed to submit a requested court disposition.

The applicant makes no statement on appeal. He submits a document from The Superior Court, Los Angeles, California, pertaining to his arrest in 1991.

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.

An alien is ineligible for Temporary Protected Status if the alien has been convicted of any felony or two or more misdemeanors committed in the United States. 8 C.F.R. § 244.4.

Continuously physically present 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.

Continuously resided 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.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, 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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, 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 the director. 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 November 7, 2002, the applicant was requested to submit evidence of nationality such as copies of pages from his passport; a school identification or driver's license; or any national identification (*cedula*) document from his country of origin which bears his photo and/or fingerprint. The applicant was also requested to submit a "certified" court disposition for a January 29, 1991 arrest. In addition, the applicant was provided the opportunity to submit evidence establishing physical presence in the United States from March 9, 2001 and his residence since February 13, 2001.

In response to the November 7, 2002 notice, the applicant submitted a copy of a birth certificate which was not accompanied by an English translation; a copy of a statement from the Los Angeles Superior Court which stated that an examination of the court records, by name only, did not reflect an action naming the applicant during the period January 1986 to October 2002; and copies of earnings statements, purportedly reflecting his employment during the years 2001 and 2002. The director determined the applicant had not established eligibility for TPS and, therefore, denied the application.

On appeal, the applicant fails to address the grounds of denial. He submits a statement from The Superior Court, Los Angeles, California, which indicates that a search of the computerized misdemeanor and felony indices for cases filed within the court's jurisdiction, reflects that any docket(s) and/or case file(s) for the applicant have been destroyed in compliance with existing laws relating to case destruction.

The applicant has not satisfactorily established that he is a national of El Salvador. Furthermore, the evidence in the record is insufficient to establish that the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001.

The earnings statements submitted by the applicant bear several different Social Security numbers and appear to have been altered. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alteration of the documents he submitted. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

The applicant submits a document from The Superior Court, Los Angeles, California, that indicates that the applicant's criminal dockets had "been destroyed in compliance with existing laws relating to case destruction." However, the fact that the applicant's records may have been destroyed does not mean the applicant was not convicted. Further, when a record is purged, that does not mean that the conviction was vacated or was in error. The burden is on the applicant to provide affirmative evidence of his eligibility. 8 C.F.R. § 244.9(a). As of this date, the applicant has failed to submit the final court disposition for his January 29, 1991 arrest.

The applicant has not submitted sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(a), (b), (c), and (e). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status 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.