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

M1

[redacted]

FILE: [redacted] Office: Texas Service Center Date: APR 26 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.

Robert P. Wiemann, Director
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 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 because the applicant failed to establish he had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserted his claim of eligibility for TPS and submitted evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for temporary protected status only if such alien establishes that he or she:

(a) is a national of a 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 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, or

(2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:

(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.

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 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 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).

On January 10, 2003 and on April 21, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and his physical presence since March 9, 2001, in the United States. The applicant was also requested to submit a photo identity document. The applicant, in response, provided the following documentation:

1. A copy of his Texas Department of Public Safety Identification Card reflecting an expiration date of June 15, 2008.
2. Copies of money transfers dated July 11, 2001 and December 10, 2001, from Dolex Dollar Express.

3. A copy of a money transfer dated June 20, 2000, from Gigante Express.
4. Copies of hand-written receipts dated February 15, 2001 and March 23, 2001, from Topacio Jewelry in Houston, Texas.
5. Copies of a US Postal Service Return Receipt dated April 27, 2001.
6. Copies of a hand-written receipt dated August 7, 2001, from Dr. [redacted]
7. A copy of his Texas Department of Public Safety Identification Card issued on October 3, 2001.
8. Copies of his Salvadoran birth certificate with an English translation.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on June 30, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

9. A copy of his 2001Federal Income Tax Return.

The applicant resubmitted copies of Nos. 2, 4, 5, and 6 above. The hand-written receipts as detailed in No.4 above reflect a numbered sequence differing only by one number over a period of five weeks. Further, the copy of the money transfer from Gigante Express as detailed in No. 3 above pre-dates the requisite period by over six months.

The tax document detailed in No. 9 above may suggest that the applicant was in the United States during the year 2001. However, the burden is on the applicant to establish his physical presence since March 9, 2001. The applicant has not provided any documentation such as pay-stubs or other contemporaneous evidence that would establish the dates of his presence or residence in the United States.

The applicant has not submitted sufficient credible evidence to establish his physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001. As the appeal will be dismissed on the grounds discussed above, these issues need not be examined further.

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.