

intentionally or recklessness to
prevent clearly unwarranted
invasion of personal privacy

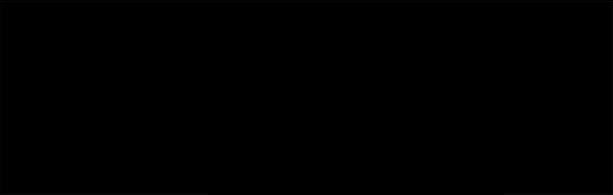
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm., A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 04 2008

[EAC 01 157 54532]

IN RE:

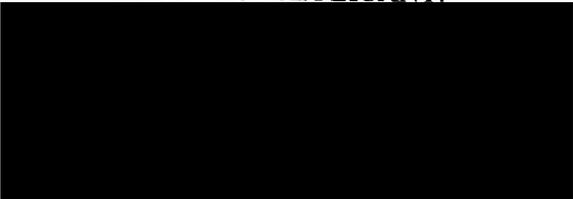
Applicant



APPLICATION:

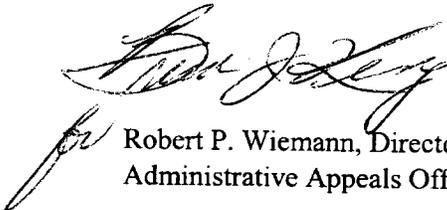
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 his continuous residence and his continuous physical presence in the United States during the requisite periods. The director also found that the applicant failed to provide the final disposition of his arrest.

On appeal, counsel provides a brief statement and additional documentation.

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 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 conditions described in paragraph (f)(2) of this section.

The first issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous residence and his continuous physical presence in the United States during the required timeframes.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on March 23, 2001.

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 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).

In a notice of action, dated October 28, 2002, the applicant was requested to submit evidence to establish his continuous physical presence and his continuous residence in the United States during the requisite timeframes. In addition, the applicant was requested to provide the final disposition of his arrest on October 27, 1988, by the Brownsville USM, Agency Case [REDACTED] and charged with Charge 1 – Possession of Marijuana, and his arrest on October 27, 1988, by the Brownsville DEA, Agency Case [REDACTED] and charged with Charge 1 – Possess Conspiracy Possess Controlled Substance. The applicant was advised, “the charge and disposition must be specifically identified (not just numeric citations or codes).” The applicant failed to respond to the notice of action.

The director denied the application, as the applicant failed to overcome the above-mentioned grounds for denial.

On appeal, counsel states that sufficient evidence has been provided for the applicant to obtain TPS approval. Counsel submits: one pay record from [REDACTED] Painting & Wallpaper, Inc., for the pay period April 15, 2001 through April 21, 2001; a letter dated July 24, 2003, from [REDACTED] who states that she has known the applicant since December 2000; a letter dated July 21, 2003, from the pastor of the Iglesia [REDACTED] in Hyattsville, Maryland, who states that the applicant has been a member of the church since August 2000, and that he is the church’s chauffeur and helps the church’s youth group; a previously submitted letter, dated March 19, 2001, from the president of [REDACTED], Inc., who states that the applicant has worked for the company since August 22, 2000, as a painter; a copy of an identification card; a copy of a previously submitted receipt from Gigante Express; and, a copy of a letter dated November 12, 2002, and an attached copy of a check paid to the order of the Brownsville District Clerk. The letter, written by the applicant regarding “Case [REDACTED]” and “Case [REDACTED]” requests “a copy of the case disposition on both cases.” The letter also explains that the disposition is needed for Immigration purposes.

The documentation submitted on appeal is not sufficient in demonstrating the applicant’s continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The letters from the pastor and [REDACTED] and the previously submitted employment letter from [REDACTED], Inc., without supporting documentation, are not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). There are no pay statements accompanying the employment letter. The applicant’s merely being a member of the Iglesia [REDACTED] and the fact that a person claims to have known the applicant since December 2000, is not sufficient in validating the applicant’s day-to-day presence and residence in the United States during the qualifying timeframes. The applicant has failed to provide sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director’s decision to deny the application for TPS on these grounds will be affirmed.

An additional issue raised by the director to be addressed in this proceeding is whether the applicant provided the final disposition of his arrests on October 27, 1988, case [REDACTED] and his arrest on October 27, 1988, case [REDACTED]

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor:"

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The Federal Bureau of Investigation report, contained in the record of proceeding, reflects that the applicant was arrested in Brownsville, Texas and charged with possession of marijuana, and possession and conspiracy to possess a controlled substance. The applicant, as previously stated, was requested on October 28, 2002, to submit the final disposition of these arrests. Because the applicant failed to submit the requested information, the director denied the application on July 9, 2003.

On appeal, counsel submits a copy of a letter dated November 13, 2002, written by the applicant, requesting a copy of the disposition on both the above-mentioned case numbers. The letter is not addressed to anyone in particular, but does have an attached copy of a money order payable to the order of the Brownsville District Clerk. Nevertheless, as of this date, the court disposition of the applicant's arrest has not been furnished. Consequently, the director's decision to deny the TPS application on this ground will also 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.