



U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE



Date:

MAY 3 2000

IN RE: Applicant:



APPLICATION:



IN BEHALF OF APPLICANT:

Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The district director denied the application for Temporary Protected Status (TPS) under § 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, because the applicant failed to establish he had been continuously physically present in the United States since January 1, 1991.

On appeal, the applicant states that he is going to try to get evidence of his stay in Florida and this will take time. The applicant indicates that his life will be in danger if he returns to El Salvador.

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

- a. Is a national of a state designated under § 244(b) of the Act;
- b. Has been continuously physically present in the United States since January 1, 1991;
- c. Has continuously resided in the United States since such date;
- d. Is admissible as an immigrant;
- e. Is not ineligible under 8 C.F.R. 240.4; and
- f. Pursuant to § 303(b)(1) of IMMACT 90, has timely registered for such status between January 2, 1991, and June 30, 1992.

The term continuously physically present, as used in 8 C.F.R. 244.1, means actual physical presence in the United States since January 1, 1991. Any departure, not authorized by the Service, including any brief, casual, and innocent departure, shall be deemed to break an alien's continuous physical presence.

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 Service. 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 applicant alleges on his application that he was present in the United States without a lawful admission or parole in September 1996. A Notice to Appear in the record reflects that he arrived in the United States in February 1999. Another Service file, [REDACTED] indicates that the applicant was unlawfully present in the

United States initially in March 1989 and he was deported to El Salvador in April 1989.

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 § 244 of the Act. The applicant has failed to meet this burden by establishing that he has been continuously physically present in the United States since January 1, 1991.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.