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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536



File:



Office: California Service Center

Date:

NOV 24 2003

IN RE: Applicant:



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

IN BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Cindy M. Doney 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 is a native and citizen of El Salvador who indicated on his application that he entered the United States without a lawful admission or parole on March 19, 1990. The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, because the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant submits additional documentation in an effort to establish his residence and presence in the United States.

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.

Section 244(c) ALIENS ELIGIBLE FOR TEMPORARY PROTECTED STATUS.-

(2) ELIGIBILITY STANDARDS.-

(B) ALIENS INELIGIBLE. - An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that-

(i) the alien has been convicted of any felony or 2 misdemeanors committed in the United States,....

"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 misdemeanor. 8 C.F.R. § 244.1.

The term continuously physically present, as used 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 term continuously resided, as used 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.

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, now the Secretary, Department of Homeland Security (Secretary),

announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary 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 Bureau. 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 FBI record reveals that on May 4, 1989, the applicant was arrested under the alias Jorge Medina by the Los Angeles Police Department (California) for assault with a deadly weapon other than a firearm or great bodily force.

The FBI record also reveals that on or about January 7, 2001, the applicant was arrested under the alias Herbert Venture by the Washington D.C. Police Department for assault with a deadly weapon - bottle.

On October 23, 2002, the applicant was provided the opportunity to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit the court dispositions for his arrests. The applicant, in response, provided:

(a) copies of certificates issued in May 26, 2000, and during May 2001 that were initially provided at the time he filed his TPS application;

(b) a previously submitted letter dated August 20, 2001, from a representative of Christ House attesting to the applicant's presence at the medical facility from January 5, 1999 through April 11, 1999, and from February 10, 2000 through June 8, 2000;

(c) a referral document dated March 27, 2001, from the Coalition for Homeless in Washington D.C.;

(d) the arrest report for his arrest on May 4, 1989, which revealed that on May 8, 1989, the applicant was convicted of exhibiting a deadly weapon other than a firearm, a misdemeanor. Case no. 89R22790; and

(e) the court disposition for his January 7, 2001, arrest which revealed that the applicant was charged with assault with a deadly weapon and simple assault. The offenses were dismissed on January 8, 2001, and November 26, 2001, respectively. Case no. M0025501.

The applicant has submitted sufficient documentation to establish that his two arrests resulted in one misdemeanor conviction.

On appeal, the applicant submits:

- (1) a copy of his El Salvadoran passport;
- (2) several invoices dated May 12, June 12, July 12, August 12, September 22, October 12, and November 12, 2001;
- (3) Avon receipts dated in February, March, April, June, August, November, and December 2001;
- (4) receipts from Huicho's Bakery, Inc., in Los Angeles, California dated April 18, 2001, May 8, 2001 and January 4, 2002;
- (5) rent receipts for his residence in Los Angeles, California for May through December 2001, and January and February 2002;
- (6) a receipt from Shaklee dated March 30, 2001;
- (7) rent receipts for his residence in Washington, D.C., for November and December 2000 and January through April 2001;
- (8) envelopes postmarked May 9 and 15, 2001;
- (9) a copy of a money order issued on July 16, 2001;
- (10) an illegible postmarked envelope;
- (11) two appointment forms from the Coalition for the Homeless dated June 26, 2001, and August 3, 2001;
- (12) an alcohol and drug program attendance sheet from the Coalition for the Homeless for September 2001; and
- (13) four receipts for "escrow" dated June 26, 2001, and during July 2001.

The documentation provided on appeal raises questions of credibility for which the applicant has not put forth a credible explanation. The receipts mentioned in items 2, 3, and 5 list the applicant's name with an address or telephone number for Los Angeles, California. These receipts, however, contradict items 6, through 12 which list the applicant's residence and presence during the same timeframe in Washington, D.C.

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 not submitted credible evidence to establish that he has met the criteria for residence and physical presence described in 8 C.F.R. § 244.2(b) and (c). 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.