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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: **OCT 16 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 N. Gomez for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The application 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 on February 14, 1993, without a lawful admission or parole. 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 of the applicant's criminal history.

On appeal, the applicant asserts that he did in fact provide the requested court disposition for the offense that occurred on October 11, 1997, and that the other offenses did not occur.

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, 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:....

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.

"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. 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 the following offenses in the State of California:

(1) on October 11, 1997, the applicant was arrested or received by the South Gate Police Department for "maliciously deface with paint," a violation of section 594(a)(1) PC, and "giving false ID to a peace officer," a violation of section 148.9 PC, both misdemeanors.

(2) on October 11, 1997, the applicant was arrested or received by the Norwalk Sheriff's Office for vandalism - deface property, a violation of section 594(a)(1) PC, and giving false ID to a peace officer, a violation of section 148.9 PC, both misdemeanors.

It is noted that the arrests stated above in numbers one and two are for the same violation.

(3) On April 15, 2001, the applicant was arrested by the Los Angeles Police Department for assault with a deadly weapon other than a firearm, great bodily injury, a violation of section 245(a)(1) PC, a felony. No record of the disposition of the case is included in the record.

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 the above mentioned arrests. The applicant, in response, provided:

(a) moneygram receipts dated February 9, 2001 and July 1, 2001;

(b) an unsigned document from American Bankers Insurance Company of Florida dated March 31, 2001;

(c) several receipts dated February 2, 2002, March 31, 2002, and April 27, 2002; and

(d) a Verizon phone bill with a due date of July 23, 2002.

The moneygram only serves to establish that the applicant was in the United States on February 9, 2001. The document from the American Bankers Insurance Company of Florida has little evidentiary weight or probative value as it does not conform to the basic requirements specified in 8 C.F.R. § 244.9(a)(2)(v). As such, the applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and physical presence described in 8 C.F.R. § 244.2(b) and (c).

The applicant also submitted:

(e) a letter from the Los Angeles County Sheriff's Department Headquarters indicating that a name search inquiry was performed

and no record of the applicant's October 11, 1997 arrest was found within its department;

(f) an arresting officer's report dated October 13, 1997, reflecting that the applicant was charged with vandalism and giving false ID to a peace officer;

(g) a letter from the Los Angeles Police Department advising the applicant that he was not arrested by its department, therefore, he should forward his request to the correct arresting agency, the South Gate Police Department; and

(h) the arrest report for his April 15, 2001, felony offense.

On appeal, the applicant provides the court disposition for his October 13, 1997, arrest which reveals that on October 28, 1997, the applicant was convicted of two misdemeanors, (1) vandalism and (2) giving false ID to a peace officer. Case no. 7SG04757.

The applicant also provides a letter dated March 13, 2003, from the Los Angeles County Superior Court indicating that a record check from January 1, 1989, to the present reveals no record of any case was filed within its jurisdiction for the April 15, 2001 incident.

The applicant is ineligible for temporary protected status because of his two misdemeanor convictions. 8 C.F.R. § 244.4(a).

The burden of proof is upon the applicant to establish that he or she meets the above requirements. The applicant's statement, on appeal, does not overcome the adverse evidence in the record. 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.