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



U.S. Citizenship
and Immigration
Services

MI



FILE:



Office: VERMONT SERVICE CENTER

Date:

DEC 16 2004

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:

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, Vermont 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 determined that the applicant was ineligible for TPS because: (1) he had been convicted of two misdemeanor offenses committed in the United States; (2) he had failed to establish continuous residence since February 13, 2001; and (3) he had failed to establish continuous physical presence since March 9, 2001. The director, therefore, denied the application.

On appeal, the applicant submits a brief and additional evidence.

The applicant appears to have legal counsel. In order to be recognized in these proceedings as the applicant's authorized representative, however, counsel must submit a properly executed Notice of Entry of Appearance as Attorney or Representative (Form G-28). Since none has been provided, the applicant will be considered to be self-represented. In the interest of due process, the evidence submitted by counsel will be considered in this proceeding.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien 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.

The term *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 and since February 13, 2001. 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 term *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 and since March 9, 2001. 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.

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 record reflects the following:

1. On August 30, 1999, in the District Court of Maryland, the applicant entered a plea of guilty to theft (less than \$300 value), a misdemeanor. He was found guilty of the charge, ordered to pay \$565 in fines and costs, and placed on probation for a period of one year.

2. On October 31, 2000, in the District Court of Maryland, the applicant entered a plea of guilty to driving motor vehicle on highway on suspended license and privilege, a misdemeanor. He was found guilty of the charge, ordered to pay \$100 in fines and costs, and placed on probation for a period of one year.
3. On November 20, 1999, in Maryland, the applicant was arrested and charged with driver giving false and fictitious name to uniformed police. The disposition of this arrest shows "STET" on October 31, 2000. The applicant did not identify this disposition although the director, in his request for additional evidence dated November 8, 2002, advised the applicant that the charge and disposition must be specifically identified (not just numeric citations or codes), whether the charge for which he was convicted was classified as a felony or misdemeanor, and that he may submit a copy of the pertinent statute, sentencing guide, or statement from the court clerk or police department for this purpose.
4. On July 5, 1999, in Maryland, the applicant was arrested and charged with possession of a controlled dangerous substance-not marijuana. On October 14, 1999, a "nolle prosequi" was entered on the case.
5. The applicant indicated on his TPS application that he was arrested on November 20, 1999 for driving while intoxicated, but that he "already complied with everything the court requested." The applicant, however, failed to submit the court documents for this arrest although he was requested, on November 8, 2002, to submit the final disposition of every charge against him. Furthermore, the applicant, on appeal, states that he "was placed in a Probation before Judgement program that means the charge of DWI was dismissed after completion of the program. Therefore, this charge should not be considered a conviction." No evidence, however, was furnished to corroborate this claim. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least two misdemeanor convictions. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States.

The applicant, on appeal, submits additional documents in an attempt to establish his qualifying residence and physical presence in the United States described in 8 C.F.R. § 244.2(b) and (c). These documents, however, do not mitigate the fact that the applicant is statutorily ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his two or more misdemeanor convictions. Accordingly, the director's decision to deny the application will be affirmed.

The burden of proof is upon the applicant to establish that he 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.