

Identifying cases that may be  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



MI

FILE:



Office: VERMONT SERVICE CENTER

Date: **NOV 03 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, claiming to be a native of Honduras and citizen of El Salvador, 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 failed to submit the final disposition of every charge against him; and (2) he failed to establish that he had been continuously physically present in the United States from March 9, 2001, to the date of filing his application. The director, therefore, denied the application.

On appeal, the applicant submits additional evidence.

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. 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. 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.

Section 212(a)(2) of the Act, 8 U.S.C. § 1182(a)(2), provides that aliens inadmissible and ineligible to receive visas and ineligible to be admitted to the United States include:

(A)(i) Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of...

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or...

The Federal Bureau of Investigation fingerprint results report reflects that on April 8, 2000, in Hyattsville, Maryland, the applicant, under the name [REDACTED] was arrested and charged with malicious destruction of property. This crime is classified as either a felony or a misdemeanor.

The applicant was requested on August 29, 2002, to submit the final court dispositions of this arrest and of every charge against him. In response, the applicant furnished a letter from the Criminal Justice Information System (CJIS), Pikesville, Maryland, indicating that no criminal record was obtained as a result of the criminal history record information maintained on the Maryland CJIS, under the name of [REDACTED]. The applicant, however, failed to submit the court disposition of this arrest from the court where the charge was filed. Furthermore, as noted, the applicant used an alias [REDACTED] at the time of his arrest. Additionally, malicious destruction of property is a crime of moral turpitude, and a conviction of this crime may render the applicant inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act. The applicant, on appeal, neither addresses this arrest nor furnishes the court disposition.

The applicant is ineligible for TPS because of his failure to submit court records that are necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the director's decision to deny the application for this reason will be affirmed.

The applicant was also requested on August 29, 2002, to submit additional evidence to establish that he had been continuously physically present in the United States from March 9, 2001, to the date he filed his application. The director noted that, in response, the applicant furnished only the letter from the CJIS outlined above. The director, therefore, denied the application on May 1, 2003.

On appeal, the applicant submits earnings statements for pay periods February 1, 2001 to February 7, 2001; February 8, 2001 to February 14, 2001; August 18, 2002 to August 24, 2002; and August 25, 2002 to August 31, 2002. No evidence was furnished to establish that the applicant met the criteria for continuous physical presence from March 9, 2001, to the date he filed his application on April 22, 2002, and as described in 8 C.F.R. § 244.2(b). Accordingly, the director's decision to deny the TPS application for this reason will also 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. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.