



U.S. Citizenship
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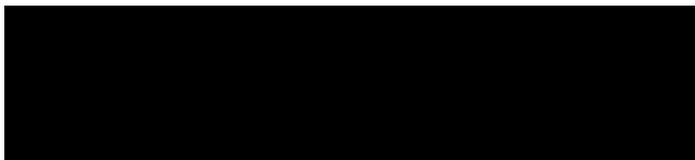
OFFICE: VERMONT SERVICE CENTER

DATE: **AUG 25 2005**

[EAC 01 212 53612]

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, reopened, and denied again by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 originally denied the application on June 29, 2003, because the applicant had failed to respond to a request for additional evidence. The applicant filed a motion to reopen the director's decision on August 9, 2003, claiming that the decision was mailed to his previous address in New York. The director granted the applicant's motion to reopen. After a review of the record of proceeding, including the motion, the director determined that the grounds for denial have not been overcome because the applicant had still failed (1) to establish that he had been continuously physically present in the United States from March 9, 2001, to the date of filing the application, and (2) to submit the final court dispositions of his arrests. The director again denied the application on March 4, 2004.

On appeal, the applicant submits additional evidence.

Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.

An alien shall not be eligible for temporary protected status under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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 misdemeanor.

The record reveals the following offenses:

- (1) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on June 13, 1998, in Washington, DC, the applicant was arrested for simple assault. The FBI report shows that the applicant was convicted of this offense on August 12, 1998. On appeal, the applicant submits a criminal history request from the Metropolitan Police Department, Washington, DC, indicating that no record was found based on a name file search. The applicant, however, failed to submit the final disposition of this arrest from the court where the case was heard.
- (2) On February 11, 1999, the applicant was arrested for Count 1, operating a motor vehicle while intoxicated, VTL 1192.3, a misdemeanor; and Count 2, operating a motor vehicle with .10 percent blood alcohol level or more, VTL 1192.2, a misdemeanor. The charges were

subsequently amended to driving while ability impaired, VTL 1192.1, a misdemeanor. On May 25, 1999, in the First District Court, County of Suffolk, New York, under Docket No. [REDACTED] the applicant was convicted of VTL 1192.1. He was placed on conditional discharge, fined \$500, and his license was suspended/revoked.

- (3) On October 15, 1999, in the First District Court, County of Suffolk, New York, Docket No. [REDACTED] (arrest date May 23, 1999), the applicant was convicted of operating a motor vehicle while intoxicated, VTL 1192.3, a misdemeanor. He was placed on probation for a period of 3 years, fined \$500, and his license was suspended/revoked.

The applicant is ineligible for TPS due to his record of at least two misdemeanor convictions, detailed in Nos. 2 and 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the application will be denied for this reason.

The next issue in this proceeding is whether the applicant has established his continuous physical presence in the United States since March 9, 2001.

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.

Persons applying for TPS offered to El Salvadorans must demonstrate 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 announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, 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 Citizenship and Immigration Services (CIS). 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 record shows that the applicant filed his TPS application on June 23, 2001. In support of his application, the applicant submitted:

1. Copies of pay statements for periods ending September 27, 2000, December 18, 2000, and January 15, 2001, under Social Security No. [REDACTED]
2. A copy of a Health Care Identification Card issued by ADF Pizza Management Company.

On May 14, 2003, the applicant was provided the opportunity to submit additional evidence establishing his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. He was also requested to submit the final court disposition of all his arrests. Because the applicant failed to respond, the director denied the application on July 29, 2003.

On motion, the applicant submitted:

3. Copies of pay statements dated September 21, 2001, October 5, 2001, and December 28, 2001.

The director reviewed the record of proceeding, including evidence furnished on motion, and determined that the applicant had not overcome the grounds for denial and again denied the application on March 4, 2004.

On appeal, the applicant asserts that he "did not have any other records due to the fact that I was fully supported by my cousin until I got a Job to which I sent proof to you already." He submits:

4. A statement from [REDACTED] dated March 29, 2004, indicating that the applicant has lived with him for the period of January 1999 through "today's date," and that he has provided the applicant's living expenses during this period.

The pay statements listed as No. 1 above are inconsistent with the applicant's statement furnished on appeal and with Mr. [REDACTED] statement (No. 4 above). The applicant had claimed that he was "fully supported by his cousin." This claim was supported by Mr. [REDACTED] who stated that he provided the applicant's living expenses. Further, the Social Security number [REDACTED] shown in No. 1 above is different from the number listed on the TPS re-registration and on the pay statements shown in No. 3 above [REDACTED]. Additionally, the identification card (No. 2 above) is undated and the applicant's name on the card was handwritten.

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 lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. The documents noted above are not considered credible and greatly reduce the credibility of other documents contained in the record of proceeding.

Nonetheless, the pay statements (No. 3 above) are dated after the requisite period, subsequent to the filing of the TPS application. The applicant claimed to have lived in the United States since January 1995. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has failed to establish that he has met the criteria for continuous physical presence in the United States since March 9, 2001, as described in 8 C.F.R. § 244.2(b). Consequently, the director's decision to deny the application on this ground will be affirmed.

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

ORDER: The appeal is dismissed.