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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
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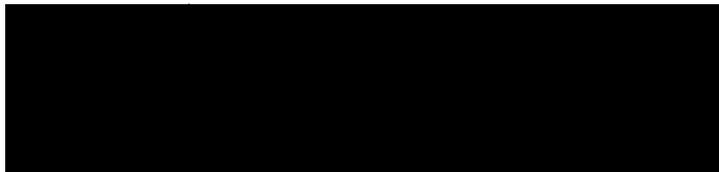


FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: DEC 13 2005  
[EAC 02 109 50986]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



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 for*  
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 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 determined that the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. He further determined that the applicant had failed to submit requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, counsel submits a statement and additional documentation.

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.

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 first issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, to the date of filing the TPS application.

The record indicates that the applicant filed his application on February 4, 2002. On April 28, 2003, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant was also requested to submit evidence of the final court dispositions of all arrests. In response, the applicant submitted documents establishing his presence from 1996 through 1998, and documentation relating to his arrests.

The director concluded that the applicant had failed to submit evidence to establish his qualifying continuous residence since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The director, therefore, denied the application on June 19, 2003.

On appeal, counsel submits the following:

1. Copies of generic receipts dated January 26, 2000 (receipt # [REDACTED]); February 23, 2001 (receipt # [REDACTED]); March 23, 2001 (receipt # [REDACTED]); April 24, 2001 (receipt # [REDACTED]) and May 21, 2001 (receipt # illegible).
2. A copy of a receipt from Casa Furniture and Bedding dated June 22, 2001.
3. Copies of payroll statements from [REDACTED], dated July 6, 2001; July 12, 2001; July 27, 2001; August 2, 2001; and October 4, 2001.

4. Copies of Bancomercio Remittance Order Form receipts dated July 22, 2001, and November 3, 2001.
5. A copy of a Commonwealth of Virginia Motor Vehicle Registration issued to the applicant on October 18, 2001.

Counsel asserts on appeal that the receipts listed in No. 1 above are "Receipts for Auto Payments." These receipts are generic and their authenticity is not verifiable. It is noted that the receipts do not list the name of the person or the company receiving the payments, and the numbers of the receipts are not in order or consecutive. Furthermore, the applicant failed to submit supporting evidence, such as a bill of sale. As provided in 8 C.F.R. § 244.9, acceptable evidence to establish proof of continuous residence and continuous physical presence may consist of: employment records; rent receipts, utility bills, receipts or letters from companies showing the dates during which the applicant received service; school records from the schools that the applicant or his or her children have attended; hospital or medical records; attestations by churches, unions, or other organizations; money order receipts; passport entries; birth certificates of children born in the United States; bank books with dated transactions; correspondence between the applicant and other persons or organizations; Social Security card; Selective Service card; automobile license receipts, title, vehicle registration, etc.; deeds, mortgages, and contracts; tax receipts; and insurance policies, receipts, or letters. As noted above, the receipts (No. 1 above) are generic in nature and their authenticity is not verifiable; therefore, they cannot be accepted to establish the applicant's qualifying continuous residence and continuous physical presence.

The record, as presently constituted, including evidence furnished by the applicant on appeal, establishes that he was present in the United States as of the year 1999, prior to the requisite period required to establish continuous residence in the United States. The remaining evidence (including Nos. 2, 3, 4, and 5 above) only establishes the applicant's continuous residence and continuous physical presence since June 2001 to the date of filing the application. The applicant claimed to have lived in the United States since March 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 submit credible documentary evidence to establish that he meets the criteria for continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for this reason will be affirmed.

The next issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors in the United States.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, the applicant was requested on April 28, 2003, to submit the final court disposition of every charge against him, including his arrest on December 12, 2002, for the felony offense of Abduction and Kidnapping. He was advised that the charge and disposition must be specifically identified. In response, the applicant submitted a letter dated May 6, 2003, from [REDACTED], Adult Probation Officer, Juvenile and Domestic Relations District Court Services Unit, Arlington County, Virginia, indicating that the applicant appeared in court on "the charge of Assault and Battery. This is an amended charge from Abduction and Kidnapping..."

The director noted that although the applicant submitted a letter from his probation officer, the applicant had failed to provide the requested information as to whether his conviction was for a felony or a misdemeanor. Therefore, the director denied the application on June 19, 2003.

On appeal, counsel submits another copy of a letter from Mr. [REDACTED] dated July 15, 2003, stating that on February 13, 2003, the applicant "appeared in the Arlington County Juvenile & Domestic Relations District Court, Arlington, Virginia, on the charge of Assault and Battery. The original charge of Abduction and Kidnapping was amended to Misdemeanor Assault and Battery by agreement of the Commonwealth Attorney. He was sentenced to 300 days in jail, all suspended for two years conditioned on general good behavior, domestic violence counseling, parenting classes, no contact with his estranged wife unless it relates to their children and payment of court costs."

The copy of the letter from Mr. [REDACTED] appears to have been generated from the Juvenile and Domestic Relations District Court Services Unit, of Arlington, Virginia; however, the applicant has failed to submit the court's charging documents and the actual final court disposition, as requested.

Furthermore, it is noted that the FBI fingerprint results report shows that on February 13, 2003, in Arlington County, Virginia, the applicant was charged with contempt of court, Virginia Code § 18.2-456, a misdemeanor. The applicant failed to submit the final disposition of this offense although he was requested on April 28, 2003, to submit the "final court disposition of every charge against him."

The applicant has failed to provide the final court dispositions of his arrests. Therefore, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). The director's decision to deny the application for failure to provide the requested final court dispositions will also be affirmed.

The record of proceeding contains a Warrant of Removal/Deportation, Form I-205, issued on May 7, 1998, in Houston, Texas, based on the final order of removal by an Immigration Judge on June 6, 1997. The applicant was notified to appear at the Houston Service office on May 29, 1998, for his enforced departure. There is no evidence in the record that the applicant appeared as required for his enforced departure.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.