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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[EAC 01 196 52108]

Office: VERMONT SERVICE CENTER

Date: DEC 15 2005

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: 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 failed to establish he had continuously resided in the United States since February 13, 2001. The director also found that the applicant had failed to submit requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, the applicant submits the requested final court disposition.

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 as 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 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.

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.
8 C.F.R. § 244.1.

The record reveals the following offenses:

- (1) On May 26, 2001, the applicant was arrested by the County Police of Mineola, New York, for a violation of PL § 145.05, Criminal Mischief 3rd E/F, a felony.

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 announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with the latest extension granted 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 May 11, 2001. On August 11, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and, to submit the final court disposition for the charge detailed above. The applicant, in response, provided evidence in an attempt to establish continuous residence and submitted a document regarding his criminal arrest.

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence in the United States during the qualifying period and, also failed to provide the requested final court disposition. Therefore, the director denied the application.

On appeal, the applicant submits the final court disposition. According to the applicant, he had previously sent in what he was told to provide by the person completing his application. The final court disposition indicates that on January 3, 2002, the applicant pled guilty to a violation of PL § 240.20(7), a violation. Consequently, this basis of the director's decision will be withdrawn.

In response to the August 11, 2003 notice, the applicant submitted:

1. A copy of a receipt from the District Court of Nassau County, New York, dated January 3, 2002.
2. Copies of an Instruction Permit issued August 12, 2003, an Interim Permit issued February 14, 2002, a State of California Identification card issued April 3, 2003, a New York State Identification card issued on January 22, 2002, and, a New York State Learner Permit issued February 14, 2002.
3. A copy of a pay stub for the pay period Sept 8, 2003 to September 14, 2003.
4. A copy of a receipt from the Social Security Administration dated July 10, 2001.
5. Statements from [REDACTED] and [REDACTED]
6. A copy of his passport issued on October 17, 2000 in El Salvador.

[REDACTED] states that the applicant has been in the United States since November 25, 2000 and worked with him from November to March 2001. [REDACTED] the applicant's godfather, states that the applicant has been in the United States since December 2000. However, these statements are not supported by any corroborative evidence.

It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Furthermore, these statements conflict with other evidence presented by the applicant. [REDACTED] stated that the applicant lived in California from November 2000 to September 2003 and was a co-worker from November 2000 to March 2001. However, the applicant had previously provided a statement from [REDACTED] Manager of [REDACTED] Restaurant, Port Washington, New York. According to [REDACTED] the applicant lived at the restaurant's lodging since November 20, 2001. Furthermore, other evidence in the record includes: the New York State identification card issued on January 22, 2002; the New York State interim permit and learner's permit issued on February 14, 2002; a letter from Social Security Administration dated July 10, 2001 and sent to a Port Washington, New York address; and, a money order receipt payable to INS dated April 8, 2001 which bears a Port Washington, New York address for the applicant. The record also contains a Federal Bureau of Investigation Fingerprint Report, which indicates the County Police, Mineola, New York, arrested the applicant on May 26, 2001. 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, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The remaining evidence is dated subsequent to the requisite dates to establish continuous residence during the qualifying period.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Beyond the decision of the director, it is noted that the applicant has provided insufficient evidence to establish his qualifying continuous physical presence during the requisite time periods. Therefore, the application must be denied for this reason as well.

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.