



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: JAN 07 2005  
[WAC 01 195 50682]

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:  
[REDACTED]

**PUBLIC COPY**

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.

*Cindy N. Hornery for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn, and the appeal will be sustained.

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 she had been convicted of a felony committed in the United States. The director, therefore, denied the application.

On appeal, counsel submits a statement and 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 § 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

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 entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence 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 Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

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 Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on September 1, 1997, in Los Angeles, California, for the felony offense of burglary. Because the FBI report shows

that the applicant was convicted of this offense, the director concluded that the applicant was convicted of a felony and denied the application.

On appeal, counsel asserts that the applicant was convicted of a misdemeanor. He submits the court's final disposition of the applicant's arrest to corroborate his assertion.

The court record shows that on September 3, 1997, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] the applicant was indicted for Count 1, burglary, in violation of 459 PC, a misdemeanor; and Count 2, grand theft: property over \$400, in violation of 487(a) PC, a misdemeanor. On September 3, 1997, the applicant was convicted of Count 1. She was placed on probation for a period of 24 months, under the condition that she serve 45 days in the county jail. Count 2 was dismissed.

The applicant, in this case, was not convicted of a felony offense as determined by the director. Therefore, this finding of the director is withdrawn. Furthermore, the applicant's one misdemeanor conviction does not render the applicant ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act.

It is noted that the applicant furnished sufficient documentation to establish that she has continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001. Furthermore, the director did not find the criteria for continuous residence and continuous physical presence, as described in 8 C.F.R. § 244.2(b) and (c), to be lacking. Nor did the director find the applicant ineligible under any other provisions of 8 C.F.R. § 244.2.

The record shows that in removal proceedings held on January 9, 1996, the Immigration Judge (IJ) denied the applicant's application for asylum and withholding of deportation and granted the applicant voluntary departure on or before February 9, 1996, with an alternate order of deportation if she should fail to depart voluntarily. The applicant appealed the decision of the IJ to the Board of Immigration Appeals (BIA). On June 21, 1996, the BIA dismissed the appeal and permitted the applicant to depart from the United States within 30 days from the date of the order, with the added stipulation that, in the event of the applicant's failure to depart, she would be deported as provided in the IJ's order. The record indicates that the applicant failed to appear at the Los Angeles district office on August 2, 1996, for her enforced departure.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. §1361. The applicant has met that burden.

**ORDER:** The director's decision is withdrawn, and the appeal is sustained.