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

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invasion of personal privacy**

MI

FILE: [REDACTED]  
[EAC 03 246 53323]

OFFICE: Vermont Service Center

DATE: JUL 18 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:  
[REDACTED]

**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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application 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 denied the application because he found that the applicant had failed to submit requested court documentation relating to her criminal record. The director also determined that the applicant had failed to establish her continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of her claim.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.  
8 C.F.R. § 244.1.

An alien is inadmissible if he or she 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.

An alien is inadmissible if he or she has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he or she is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals that on December 20, 2000, the applicant was arrested for 55363BO Prostitution by the Sheriff's Office of Columbia, South Carolina. Pursuant to a letter dated January 7, 2004, the applicant was requested to submit the final court disposition for the charge detailed above. In addition, if convicted, the applicant was also requested to provide evidence showing whether the charge for her arrest was classified as a felony or misdemeanor. The applicant was also requested to submit evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. The applicant was provided 30 days to respond to the director's request. On January 27, 2004, the applicant requested an extension of 60 days in order to submit the requested documentation. However, the applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to establish her eligibility for TPS and denied the application on March 14, 2004.

On appeal, counsel, on behalf of the applicant, states that the Service erred in denying the application as the applicant has demonstrated that she qualifies for TPS. Counsel also states that to the "best of knowledge and belief", the applicant has not been convicted of a felony or two or more misdemeanors. In addition, counsel states that the court disposition will be sent to the AAO within 30 days. Counsel also provides the following evidence in support of the applicant's eligibility: copies of the biographical pages of the applicant's El Salvadoran passport; an employment letter dated March 5, 2004, from [REDACTED] who stated that the applicant had been employed by him from January 2001 to April 2001; a copy of an immunization record for the applicant's son born on December 12, 2000; a copy of a letter dated January 31, 2001, from the Multi-National Non-PA Medicaid of Washington, D.C.; and a copy of her son's birth certificate issued on May 2, 2000.

A review of the record of proceedings reflects that the applicant has not provided the final court dispositions of her arrest on December 12, 2000, for 55363BO Prostitution by the Sheriff's Office of Columbia, South Carolina. Although counsel had requested an additional 30 days to provide the necessary documentation, as of the date of this notice, no additional information pertaining to the applicant's arrest has been entered into the record. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application relating to her criminal record. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

The other issue in this proceeding is whether the applicant has established her qualifying continuous residence and continuous physical presence in the United States. The employment letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of her employment. The immunization record for the applicant's son reflects immunizations for him that pre-date the beginning requisite time periods for continuous residence and continuous presence in the United States. In addition, the single letter from the National Non-PA Medicaid of Washington, D.C also pre-dates the beginning of the requisite time periods for El Salvadoran TPS. The applicant claims to have lived in the United States since December 1998. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support her continuous residence and continuous physical presence in the United States during the requisite time periods. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish

that she satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

It is also noted that the applicant filed a previous application for TPS during the initial registration period. That application [EAC 02 097 51624] was denied on July 1, 2003, for abandonment. Since that application was denied due to abandonment there was no appeal available; however, the applicant could have filed a request for a motion to reopen within 30 days from the date of the denial. The applicant did not file a motion to reopen during the requisite timeframe. The applicant filed a subsequent Form I-821 [EAC 03 246 53323] on August 30, 2003. Since the applicant's initial application [EAC 02 097 51624] was denied on July 1, 2003, the subsequent application cannot be considered as a re-registration. Any Form I-821 application subsequently submitted by the same applicant after an initial application is filed and a decision rendered, must be considered as either a request for annual registration or as a new filing for TPS benefits. Therefore, this application can only be considered as a late registration.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence to establish her eligibility for late registration. Therefore, the appeal will also be dismissed for this reason.

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.