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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 01 202 57792]

OFFICE: Vermont Service Center

DATE: JUN 10 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:

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. 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 determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director also denied the application because it was not possible to determine the final court dispositions of his criminal record.

On appeal, counsel, on behalf of the applicant asserts his eligibility for TPS and submits evidence in support of his 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 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 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 is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On July 4, 2000, the applicant was arrested for Possession of Forged Instrument 2<sup>nd</sup> NY; and,
- (2) On July 4, 2000, the applicant was arrested for Criminal Possession Marijuana 5<sup>th</sup> Sub 1 NY.

Pursuant to a letter dated November 20, 2002, the applicant was requested to submit the final court disposition for each of the charges detailed above. In addition, if convicted, the applicant was also requested to provide evidence showing whether the charge for each arrest was classified as a felony or misdemeanor. The applicant was also requested to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The applicant also submitted copies of a certified letter dated December 12, 2002, from the Police Department of Nassau County, New York, reflecting that the applicant was charged with the following offenses:

- (3) On July 4, 2000, the applicant was arrested for Possession of Forged Instrument 2<sup>nd</sup>, and;
- (4) On July 4, 2000, the applicant was arrested for Criminal Possession Marijuana 5<sup>th</sup>.

The applicant also submitted a copy of the case disposition from the First District Court of Nassau County dated December 11, 2002, indicating the arraignment charges for his arrest on July 4, 2000. The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on June 30, 2003.

On appeal, counsel, on behalf of the applicant, states that the Service erred in denying the application based on the allegations that the applicant did not provide sufficient materials to determine the final court disposition. Counsel further indicates that because of the applicant's lack of communication in the English language, the applicant did not previously provide the proper documentation. The applicant, through counsel, provides the final court disposition from the First District Court of Nassau County in the State of New York, along with a copy of the Penal Law code of New York regarding the charges against the applicant, and a copy of a letter dated December 12, 2002, from the Nassau County Police Department regarding the applicant's past arrest on July 4, 2000. In addition, counsel provides some evidence in support of the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods.

Counsel, on appeal, has provided sufficient evidence showing the final court disposition and related classification of the charge against the applicant. The record reflects that the applicant was charged with criminal possession of a forged instrument in the third degree, a misdemeanor. The record also reflects that this is the only charge against the applicant. The applicant has overcome this portion of the director's decision.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On appeal, counsel provides the following documentation: a letter dated December 17, 2002, from Ms. [REDACTED] Restaurant Support Manager for Taco Bell Corporation, who stated that the applicant has worked for her since March 22, 2002; copies of the applicant's Internal Revenue Service Form W-2, Wage and Tax Statements, for the years 2001 and 2002; copies of the applicant's U.S. Individual Income Tax and New York State Income Tax returns for the years 2001 and 2002; and copies of the biographical pages of the applicant's El Salvadoran passport.

The employment letter from Ms. [REDACTED] does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, Ms. [REDACTED] does not provide the address where the applicant resided during the period of his employment. It is further noted that the information post-dates the beginning of the requisite time periods for continuous residence and continuous physical presence in the United States by over one year. In addition, the tax documents may indicate that the applicant was in the United States during the years 2001 and 2002. However, these documents do not provide the actual dates of employment. The burden is on the applicant to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. The applicant claims to have lived in the United States since 1999. Although the applicant was arrested in New York State on July 4, 2000, this pre-dates the requisite time periods for El Salvadoran TPS by six months. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his 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 he 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.

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.