



U.S. Citizenship
and Immigration
Services

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

PUBLIC COPY



FILE: [REDACTED] OFFICE: Vermont Service Center DATE: **MAR 21 2005**
[EAC 02 145 50769]

IN RE: Applicant: [REDACTED]

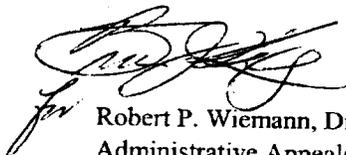
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

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.


for 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 the applicant had failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to establish his qualifying residence and physical presence in the United States during the requisite periods. The applicant also failed to submit a full explanation of his affirmative responses to each statement that applies to him in Part 4, Sections A-O on his TPS application.

On appeal, counsel, on behalf of the applicant, states that the applicant has not yet been to court regarding his arrests.

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 January 1, 2003, the applicant was arrested for VTL 1192.2 UMOC Operate MV w/greater than 0.10 BAC §15404; and,
- (2) On January 1, 2003, the applicant was arrested for VTL 1192.3 UMOC DWI 15404

Pursuant to a letter dated June 30, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In addition, the applicant was requested to submit a full explanation of his affirmative responses to each statement that applies to him in Part 4, Sections A-O, and to provide the disposition (outcome) of any arrest from the proper authorities.

The applicant did not respond to the director's request; therefore, the director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on December 10, 2003.

On appeal, counsel, on behalf of the applicant, states that the applicant has not yet been to court regarding his arrests. Counsel also submits a copy of an unsigned letter dated January 6, 2004, addressed to [REDACTED] indicating that the applicant had been scheduled for a non-jury trial on March 9, 2004. Counsel also indicates that the applicant will send additional evidence regarding his residence in the United States. On April 30, 2004, counsel submitted a brief and stated that the final disposition for the applicant's arrests is still not available. Counsel also indicated that the applicant's lawyer has filed a motion to dismiss. The applicant has failed to provide evidence revealing the final court disposition of his arrests as detailed above. 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). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

The second issue in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States.

Counsel, on appeal, also provides the following documentation: copies of hand-written rent receipts dated September 4, 1998, December 5, 1998, March 5, 1999, October 8, 1999, January 7, 2000, February 4, 2000, March 4, 2000, April 7, 2000, and May 5, 2000; a copy of a vehicle certificate of title issued on August 23, 1999, bearing the name Mr. [REDACTED]; copies of the biographical pages of a Guatemalan passport bearing the name of Mr. [REDACTED]; copies of the biographic pages of the applicant's El Salvadoran passport issued on June 11, 2002 in Manhattan, New York; a copy of a New York State Conditional Driver License bearing the name of Mr. [REDACTED] issued on August 11, 2003; copies of customer receipts for an interim license from the New York State Department of Motor Vehicles bearing the name of Mr. [REDACTED]; a copy of his Social Security card; a copy of a driver license receipt from the

Florida Department of Highway Safety and Motor Vehicles issued on January 10, 1997, bearing the name of Mr. [REDACTED]

Counsel, on appeal, also indicates that the applicant uses the name of [REDACTED]. A review of the record of proceedings reflects that the applicant submitted copies of his birth certificate and the biographical pages of his El Salvadoran passport bearing the name of Mr. [REDACTED]. In addition, the applicant's birth certificate and passport reflect that the applicant was born on December 13, 1971, in Metapan, El Salvador. Further, the applicant also claimed on his applications for temporary protected status and employment authorization that he was born on December 13, 1971, in Metapan, El Salvador. Evidence of the use of two names may include official court documents registered with the proper civil authorities. Counsel has not presented any official court document as evidence of his use of the name [REDACTED]. It is also worth noting that Mr. [REDACTED] was born on February 15, 1972, in Guatemala. The applicant has not provided any official court documents registered with the proper civil authorities certifying the use of Mr. [REDACTED]. In addition, the discrepancies found in the date of birth and nationality of the two individuals further discredits the applicant's legal use of [REDACTED].

The copies of the hand-written rent receipts provided by the applicant are not supported by any other credible corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. The applicant claims to have lived in the United States since March 23, 1994. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts. The copies of cancelled checks from Provident Bank post date the requisite time periods for El Salvador TPS. 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 temporary protected status 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.