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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
[EAC 02 292 52338]

Office: VERMONT SERVICE CENTER

Date: MAY 09 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.

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 (AAO) 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 denied the application because the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to provide documentation concerning the disposition of all of his criminal charges and convictions.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 § 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.
- (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 conditions described in paragraph (f)(2) of this section.

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.

The phrase 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.

The phrase 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 phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. 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 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 meets the above requirements. Applicants must 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant filed an earlier Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now CIS, on March 27, 2001. On January 15, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on July 3, 2002.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15). The record reflects that the applicant did not file a motion to reopen his case. Instead, he chose to file a new Form I-821 on September 9, 2002, still within the initial registration period.

The record reflects that, in support of his first and second Forms I-821, the applicant submitted the following documentation:

1. A photocopy of the identification page from his El Salvadoran passport;
2. A photocopy of his El Salvadoran birth certificate, with English translation;
3. A photocopy of a receipt from the Nassau County Department of Health, Mineola, New York, dated January 13, 1998;
4. A photocopy of a vaccine record from the New Cassel-Westbury Community Health Center, Westbury, New York, showing that the applicant received vaccinations in December 1997 and January 1998; and,
5. An employment verification letter, dated July 26, 2002, [REDACTED] culinary manager at the Red Lobster in Hicksville, New York, stating that the applicant has been employed since 1999.

On August 18, 2003, the director again requested the applicant to submit additional documentation to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director noted that the record revealed that the applicant had been arrested and charged with the following offenses:

- On March 14, 2000, by the Mineola/East Meadow Sheriff's Office, for violation of probation;
- On January 5, 2001, by the Mineola County Police, for Criminal Possession With Intent to Use 3rd degree; and,
- On January 5, 2001, by the Mineola/East Meadow Sheriff's Office, for Att Criminal Possession of a Weapon.

Therefore, the director requested the applicant to provide documentation of establish the final disposition (sentence, probation, dismissal, etc.) of every charge, specifically identifying each charge and disposition (not just containing numeric citations or codes). The director also advised the applicant that he must provide evidence showing whether any charge for which he was convicted was classified as a felony or misdemeanor.

Counsel responded to the director's request by submitting a record from the First District Court of Nassau County, New York, relating to one of his January 5, 2001 arrests. The document indicates that he pled guilty to a violation of 110-265.01, Criminal Possession of a Weapon in the Fourth Degree, a class A misdemeanor. Counsel did not provide any additional documentation relating to the applicant's other two offenses or his residence and physical presence in the United States.

The director determined that the applicant had not submitted sufficient evidence to establish his eligibility for TPS and denied the application on October 17, 2003.

On appeal, counsel states that the applicant has submitted sufficient evidence to establish his residence since February 13, 2001, and his physical presence since March 9, 2001. In support of the appeal, counsel submits the following additional documentation:

6. A photocopy of the applicant's earnings statement from Red Lobster for the 1-week pay period ending August 18, 2002; and,
7. A photocopy of an earnings statement from Apple Food Service of New York for the 1-week pay period ending on November 9, 2003. The statement also indicates that the applicant was hired on January 29, 2003.

The employment letter (No. 5, above) 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)(v). Specifically, it does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's duties with the company. Nos. 3 and 4 are dated more than two years prior to the dates required to establish qualifying continuous residence and physical presence. Similarly, No. 7 is dated more than one year after the required dates. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Based on a review of the record, it is concluded that the applicant has failed to submit sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Furthermore, the applicant has failed to submit all of the documentation requested relating to the dispositions of all of the criminal charges against him. Consequently, the director's decision to deny the application for temporary protected status will 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.