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



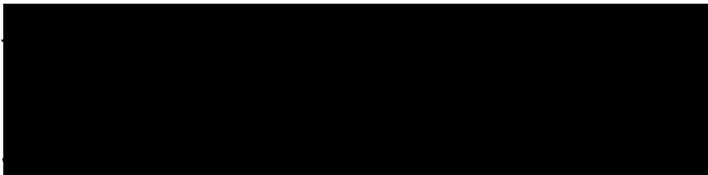
**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2005**
• [WAC 01 242 59350]

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: Self-represented

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and 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 submit the requested court disposition of all of his arrests. He further determined that the applicant failed to submit sufficient evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. The director, therefore, denied the application.

On appeal, the applicant submits the requested court documents.

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 section 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.

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 record reveals the following offenses:

- (1) On January 24, 2001, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, [REDACTED] arrest date January 16, 2001; name used: [REDACTED] the applicant was indicted for Count 1, minor in possession of alcohol, 25662 B&P, a misdemeanor; and Count 2, drinking in public, 41.27(c) LAM, a misdemeanor. On July 19, 2001, the court dismissed both Counts 1 and 2 in furtherance of justice per 1385 PC, and based upon plea in [REDACTED]
- (2) On June 19, 2001, in the Municipal Court of Los Angeles, Criminal Judicial District, County of Los Angeles, California, [REDACTED] arrest date June 17, 2001; name used: [REDACTED] the applicant was indicted for Count 1, making a terrorist threat, 422 PC, a misdemeanor; and Count 2, exhibiting a deadly weapon other than a firearm, 417(a)(1).PC, a misdemeanor. On July 19, 2001, the applicant was convicted of Count 1. He was placed on probation for a period of 24 months, ordered to spend 49 days in the county jail, and pay \$188 in fines and costs. Count 2 was dismissed.
- (3) On November 22, 2002, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, [REDACTED] arrest date November 14, 2002; name used: [REDACTED] the applicant was indicted for Count 1, giving false information to a peace officer, 31 VC, a misdemeanor; and Count 2, unlicensed driver,

12500(a) VC, a misdemeanor. On December 19, 2002, the applicant was convicted of Count 2. He was placed on probation for a period of 12 months, and ordered to pay \$541 in fines and costs. Count 1 was dismissed.

- (4) On April 3, 2003, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, California, [REDACTED] (arrest date October 29, 2002; name used: [REDACTED] the applicant was indicted for Count 1, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 2, no proof of car insurance, 16028(a) VC, an infraction. The court document shows that the applicant's arraignment was scheduled for April 16, 2003; however, the applicant failed to submit court documents to show the outcome of that arraignment.

The applicant is ineligible for TPS due to his two misdemeanor convictions (Nos. 2 and 3 above) and because he failed to provide the final court disposition of his arrest detailed in No. 4 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

The next issue in this proceeding is whether the applicant has 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 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.

The record shows that the applicant filed his TPS application on May 15, 2001. On March 5, 2003, the applicant was requested to submit additional evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the TPS application. He was also requested to submit documentation establishing his identity, and the final court disposition of any arrests in the United States. The director noted that the applicant failed to submit all of the requested court disposition and also failed to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States, and denied the application on June 9, 2003.

While the applicant, on appeal, failed to provide additional evidence to establish his qualifying residence and physical presence in the United States, the record of proceeding contains evidence furnished by the applicant in

response to the director's request for additional evidence, but which was not addressed by the director. The applicant furnished (1) a copy of the biographical page of his El Salvadoran passport issued on August 10, 1998; (2) pay statements from Gong Sung Enterprises for pay periods December 22, 2000 to March 16, 2001, inclusive; (3) pay statements from Dollar Megamart Inc. for pay periods August 10, 2001 to October 4, 2001, inclusive; (4) and Form W-2 Wage and Tax Statements for 2001 and 2002.

This evidence, in conjunction with records of his arrests on January 16, 2001, June 17, 2001, November 14, 2002, and October 29, 2002, appears to establish that the applicant may have satisfied the continuous residence and continuous physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). The applicant, however, is statutorily ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on two misdemeanor convictions, and his failure to provide all final court dispositions of his arrests. Accordingly, the director's decision to deny the application will be affirmed.

The burden of proof is upon the applicant to establish 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.