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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 25 2005**
[WAC 02 278 53171]

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.


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 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 determined that the applicant had failed to submit final court dispositions of his arrests. He further determined that the applicant failed 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 additional evidence.

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.

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.

The Federal Bureau of Investigation fingerprint results report shows that on September 16, 2000, in Los Angeles, California, the applicant was arrested for inflicting corporal injury to a spouse/cohabitant. In a notice of intent to deny dated December 2, 2003, the applicant was requested to submit the final court disposition of this arrest, and all other arrests. He was advised that the final disposition should be obtained for the court where the hearing took place, not from the police station. The director determined that the applicant failed to provide the requested documents and denied the application on January 8, 2004.

It is noted that on December 22, 2003, prior to the director's decision to deny the application, the Service Center received the applicant's response to the director's request for evidence dated December 2, 2003. The applicant furnished a copy of the arrest report indicating that the applicant was arrested by the Los Angeles Police Department on September 16, 2000, and charged with the felony offense of 273.5(a) PC (spousal abuse).

On appeal, the applicant submits a letter dated January 20, 2004, from the Los Angeles County Superior Court, California, indicating that the indexes of the court was examined, "by name only," and that no record was found under the name of [REDACTED]

The applicant, in this case, was advised to submit the court's final disposition of his arrest from the court where the hearing took place. It is not clear in the record whether this case was heard at the Superior Court. Records from the court having jurisdiction over this case would contain this information. Additionally, it may be assumed that the applicant would have known where his court hearing took place.

The applicant has failed to provide the final court disposition of every charge against him as required by the director. 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). 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 burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall 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 or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed his TPS application on September 30, 2002. In a notice of intent to deny dated December 2, 2003, the applicant was requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence from March 9, 2001, to the date of filing the TPS application. He was also requested to submit evidence establishing his nationality. The director noted that the applicant, in response to his request for additional evidence, furnished a copy of his birth certificate, a copy of his passport, and earning statement for July 29, 2000. He determined, however, that the submission was insufficient to establish continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, and denied the application on January 8, 2004.

On appeal, the applicant submits the following:

1. A statement dated January 20, 2004, from [REDACTED] residing at [REDACTED] street in Los Angeles, California, stating that she has known the applicant since July 2000, and that he resided at her home from July 2000 to April 2001.
2. A statement dated January 19, 2004, from [REDACTED] stating that the applicant worked at his house as a handy man, remodeling her house, from February 1 to March 20, 2001.
3. Copies of money transfer receipts dated April 21, 2001; July 20, 2001; August 24, 2001; and October 19, 2001.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, the affidavits provided by the applicant were not supported by any other corroborative evidence. Further, although [REDACTED] No. 1 above) indicated that the applicant resided with her, the applicant did not list [REDACTED] address as his address in any documents furnished. The remaining evidence only establishes the applicant's residence and physical presence from April 2001 to October 2001 (No. 3 above).

The applicant has failed to establish his qualifying continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001. 8 C.F.R. § 244.2(a), (b), and (c). Consequently, the director's decision to deny the application for this reason will also be affirmed.

Beyond the decision of the director, it is noted that the applicant filed his TPS application on September 30, 2002, after the initial registration period for El Salvadorans (from March 9, 2001 to September 9, 2002) had closed. There is no evidence in the record that the applicant fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). Therefore, the application must also be denied for this reason.

The burden of proof is upon the applicant to establish that 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.