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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE:
[WAC 02 176 52070]

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. 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record. The director also determined that the applicant had not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement.

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.

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.

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 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).

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 first issue in this proceeding is whether the applicant has failed to submit requested court documentation relating to his criminal record

The record reveals that the applicant was arrested on March 23, 2001, in Santa Ana, California, and charged with one count of inflicting corporal injury on a spouse or cohabitant.

Pursuant to a letter dated February 24, 2003, the applicant was requested to submit the final court disposition for the charge detailed above. The applicant was also requested to submit evidence of identity and nationality and evidence 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. In response, the applicant submitted evidence of identity and nationality and evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods; however, the applicant failed to provide the final court disposition of the arrest detailed above.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on January 12, 2004.

On appeal, the applicant states that he does not understand why his application for TPS was denied because he submitted all the evidence requested in the Notice of Intent to Deny dated February 24, 2003.

The applicant has failed, both in response to the Notice of Intent to Deny and again on appeal, to provide any evidence revealing the final court disposition of his arrest 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). Consequently, the director's decision to deny the application on this basis will be affirmed.

The second issue in this proceeding is whether the applicant has submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

As previously stated, the applicant was requested on February 24, 2003, to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. In response, the applicant submitted the following:

1. a photocopy of an Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, purportedly reflecting work performed by the applicant for Kellmar, Inc., in Newport Beach, California in 2002;
2. a photocopy of an IRS Form W-2 purportedly reflecting work performed by the applicant for Skyline Concrete Contracts in Laguna Beach, California, in 2002;
3. a photocopy of a California "W-2 and Earnings Summary" purportedly reflecting work performed by the applicant in 2002;
4. photocopies of pay statements dated March 22, 2002 and March 25, 2002, purportedly reflecting work performed by the applicant for [REDACTED] in Newport Beach, California,
5. a photocopy of a pay statement dated June 1, 2001, purportedly reflecting work performed by the applicant for Tailored Masonry of California in Santa Ana, California;
6. a photocopy of a pay statement purportedly reflecting work performed by the applicant for Foodmaker, Inc., in San Diego, California, during the pay period from January 19, 1998 to February 1, 1998;
7. a photocopy of a pay statement dated October 27, 2000, purportedly reflecting work performed by the applicant for West Coast Arborists in Anaheim, California during the pay period from October 9, 2000 to October 22, 2000;
8. a photocopy of a pay statement dated October 20, 1997, purportedly reflecting work performed by the applicant for MTOC, Inc., [REDACTED] city and state unknown;
9. a photocopy of a billing statement dated March 21, 2002, from UCIHS Physicians Billing Group purportedly addressed to the applicant at [REDACTED] Santa Ana, CA 92701"; and,

10. a photocopies of a pay statement dated August 20, 1999, purportedly reflecting work performed by the applicant for Newell Security Enterprises, Inc.

The director determined that the applicant had not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods and denied the application.

On appeal, the applicant has failed to provide any additional evidence to establish his qualifying continuous residence and continuous physical presence.

All of the documents listed above appear to have been altered. The name of the individual to whom the documents were originally issued has clearly been eradicated and the applicant's name typed in its place. The applicant's name in all of the documents listed above appears to have been typed using the same font, a font that does not match the font type or size used in the rest of the documents. The applicant has not provided any explanation for these apparent alterations.

Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The applicant has failed to submit sufficient credible evidence to establish that he has met the criteria 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.