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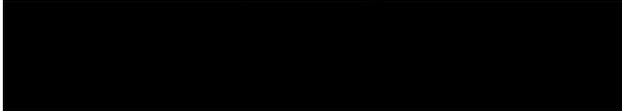


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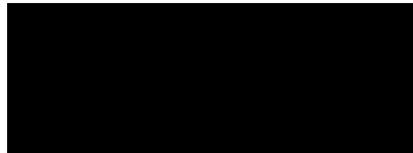
Office: Vermont Service Center

Date: **NOV 04 2005**

IN RE: Applicant: 

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied, reopened, and denied again by the Director, Vermont 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 denied the application because the applicant failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The applicant also failed to provide the court dispositions of the charges relating to his criminal record. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, submits documentation in support of the applicant's eligibility for TPS.

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.

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. 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 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 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).

Further, 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.

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.

The record reveals the following offenses:

- (1) On June 15, 1994, the applicant was arrested for “Petty Theft” by the Signal Hill Police Department under the name of [REDACTED]. On June 26, 1994, the applicant pled guilty to this misdemeanor (Docket [REDACTED]).
- (2) On January 29, 1995, the applicant was arrested for theft by the Santa Barbara Sheriff’s Office. Despite the director’s request the applicant failed to submit the final court disposition for this offense.
- (3) On July 11, 1998, the applicant was arrested for “F-Terror Threats” by the Los Angeles Police Department. Despite the director’s request the applicant failed to submit the court disposition for this offense.

Pursuant to a notice of intent to deny the application dated June 6, 2003, the applicant was 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. The applicant was also requested to submit the final court dispositions regarding his past arrests as detailed above. In addition, the applicant was requested to provide evidence showing whether the charge for which he was convicted was classified as a felony or misdemeanor. On August 25, 2003, the director denied the application because he determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

Counsel, on behalf of the applicant filed an appeal which was received by the VSC on September 29, 2003, after the prescribed period of 33 days. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the applicant had failed to establish 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. The director, therefore, affirmed her previous decision and denied the application on March 19, 2004.

On April 10, 2004, the applicant filed an appeal to the director's on March 19, 2004 decision, which is now before the AAO.

On appeal, counsel, on behalf of the applicant, submits the following documentation: a copy of a payment receipt from the Union City Municipal Court dated August 10, 2001, for a traffic fine; a copy of an account balance verification letter from Wachovia Bank dated April 2, 2004, reflecting an account open date of March 27, 2001; and a copy of a weekly labor payroll statement from Lobato Carpet Company for the time period of "11/12-11/16".

The dates on the letters from the Wachovia Bank and the payment receipt from the Union City Municipal Court fall after the beginning of requisite time periods for continuous residence and continuous physical presence in the United States for El Salvador TPS. In addition, the payroll statement from Lobato Carpet Company does not indicate which year the payments were made nor reflect whether the company is located in the United States. 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 counsel on appeal is not sufficient to establish that the applicant 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 be affirmed.

Beyond the decision of the director, it also is noted that the applicant has provided insufficient evidence of his criminal record to establish his eligibility for TPS. A review of the record of proceedings reflects that counsel had submitted a letter dated September 19, 2003, from the Superior Court of California in the County of Los Angeles indicating that no record could be found regarding the applicant's past arrest for "Terror Threats" on July 11, 1998, as detailed in No. 3 above. A review of this letter reflects that the court searched for records of an arrest on "July 11, 1978." In addition, according to the Federal Bureau of Investigation fingerprint results, the applicant had used an alternative birth date of "August 10, 1972", under his alias name of [REDACTED]

[REDACTED] The letter does not reflect a search using the applicant's alternative birth date, under his alias [REDACTED]. Therefore, the application will also be denied for these reasons.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. An alien applying for TPS 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.