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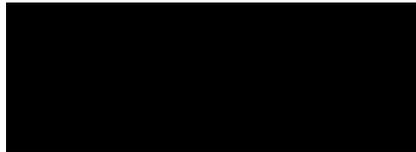
PUBLIC (b)(7)

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



U.S. Citizenship
and Immigration
Services

M1



FILE:



OFFICE: Vermont Service Center

DATE: NOV 27 2005

[consolidated with
[EAC 01 213 51251]

IN RE:

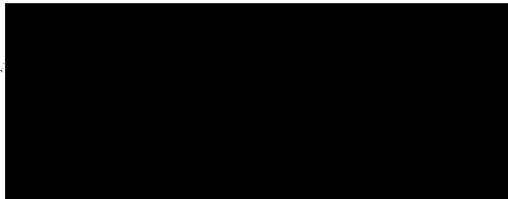
Applicant:



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 by the Director, Vermont Service Center. The application 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States from March 9, 2001, to the date of filing his application.

On appeal, counsel, on behalf of the applicant, asserts 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 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.

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.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses in New York:

- (1) On August 21, 1994, the applicant was arrested for Driving While Intoxicated by the Mineola Police Department; and,
- (2) On March 22, 1997, the applicant was arrested for Driving While Intoxicated by the Suffolk County Police Department.

Pursuant to a letter dated April 5, 2004, the applicant was requested to submit the final court dispositions for the charges as detailed above. In response, the applicant provided a copy of a certified true excerpt dated March 1, 2004, from the First District Court of Nassau County, New York (Docket Number: [REDACTED]) reflecting that the applicant plead guilty to VTL 1163A and VTL 1192.1 on September 28, 1994. The final court disposition for this arrest also reflects that the applicant was sentenced to 10 days imprisonment and paid a fine of \$350. In addition, the applicant also provided a printout dated April 22, 2004, from the Division of Administrative Services, Criminal History Record Search (CHRS) Program, reflecting that the applicant was arrested on October 16, 1999 (Docket/Case/Serial Number: [REDACTED]) and that the underlying charges were subsequently dismissed. Further, the applicant also provided some documentation in an attempt to establish his continuous residence and continuous physical presence during the qualifying time frames.

The director denied the application on July 20, 2004, because the applicant failed to submit the final court disposition regarding his past arrest on March 22, 1997, as noted in No. 2 above. The director also denied the application because the applicant failed to establish his continuous residence in the United States since 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 stated in the denial that the evidence submitted by the applicant dated prior to or after the requisite time period for El Salvadoran TPS.

On appeal, counsel, on behalf of the applicant, states that the director erred in denying the application and that the record will show that the applicant is prima facie eligible for TPS. Counsel does not provide any documentation on appeal. As such, the record will be considered complete.

A review of the record of proceedings reflects that the applicant has failed to provide any evidence revealing the final court disposition of his arrest on March 22, 1997, as detailed in No. 2 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 for this reason will be affirmed.

The other issue in this proceeding is whether the applicant has established his continuous residence and continuous physical presence in the United States during the requisite time periods.

On his TPS application, the applicant claimed to have lived in the United States since November 10, 1997. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support his continuous residence and continuous physical presence in the United States during the requisite time periods. The director had already considered the previously evidence submitted by the applicant, and no new evidence has been presented into the record on appeal. It is determined that the applicant has failed to establish that he 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 also be affirmed.

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 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.