

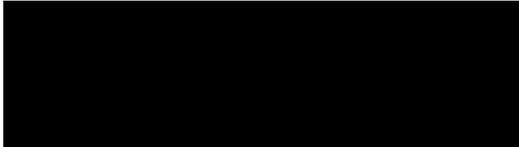
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**U.S. Citizenship
and Immigration
Services**

MI



FILE:



[WAC 02 272 51233]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: OCT 03 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:

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 denied the application because the applicant had failed to submit: (1) evidence to establish that he had continuously resided in the United States since February 13, 2001; (2) evidence to establish that he had been continuously physically present from March 9, 2001, to the date of filing his application; and (2) the final court disposition of his arrest.

On appeal, the applicant submits a statement and additional evidence.

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 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 that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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 Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The applicant filed his TPS application on September 3, 2002. In a notice of intent to deny dated February 13, 2003, the applicant was requested to submit evidence to show 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 TPS application.

The director noted that, in response, the applicant submitted Form W-2 Wage and Tax Statement for 2000, and a school record indicating that he was registered for a non-credit course for Spring 1999. He determined that the applicant, however, had failed to submit evidence to establish continuous residence and continuous physical presence during the requisite period and denied the application on May 27, 2003.

On appeal, the applicant states that he has been residing in the United States since January 1997. He submits copies of Forms W-2 Wage and Tax Statements, issued by his employer, [REDACTED] for 1998, 1999, 2000, 2001, and 2002.

The applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the applicant has overcome these findings of the director.

The next issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors.

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.

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.

Based on the Federal Bureau of Investigation fingerprint results report, contained in the record of proceeding, the applicant was requested on February 13, 2003, to submit the final court disposition of his arrest in San Francisco, California, on January 29, 2002 (name used: [REDACTED] for Count 1, carrying a stolen loaded firearm [PC 12025(b)(6), a felony]; Count 2, carrying a concealed weapon on person with prior conviction [PC 12031(a)(2)(F), a felony]; Count 3, illegal firearm discharge with negligence [PC 246.3, a felony]; Count 4, illegal firearm discharge with negligence [PC 246.3, a felony]; Count 5, possession of a narcotic controlled substance [H&S 11370.1(a), a felony]; and Count 6, possession/purchase for sale a narcotic controlled substance, [H&S 11350(a), a felony]. The applicant, in response, failed to submit the requested final court disposition; therefore, the director denied the application on May 27, 2003.

On appeal, the applicant asserts that his case is still pending. He submits copies of the Minutes of the Superior Court of California, County of San Francisco, indicating that the court hearing for this case was ordered continued to the following dates: December 10, 2002; December 13, 2002; December 16, 2002; March 21, 2003; April 25, 2003; and July 18, 2003.

As of this date, however, the applicant has failed to provide court documents to show the outcome of the court hearing or to provide the final court disposition of the charges, detailed above. Convictions of possession and purchase for sale a controlled substance may render the applicant inadmissible to the United States pursuant to sections 212(a)(2)(A)(i)(II) and 212(a)(2)(C) of the Act. However, the applicant failed to submit the final court disposition of his arrest as requested 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). Consequently, the director's decision to deny the application on this ground will 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.