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U.S. Citizenship  
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Services



MI

FILE: [REDACTED]  
[EAC 01 157 53725]

OFFICE: VERMONT SERVICE CENTER

DATE: **OCT 03 2005**

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, 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 had failed to respond to his requests 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 dispositions of his arrests.

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 March 23, 2001. On February 13, 2002, and again on May 22, 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 applicant failed to respond.

The director determined that the applicant had failed to submit evidence to establish continuous residence and continuous physical presence during the requisite period and denied the application on March 19, 2004.

On appeal, the applicant asserts that he mailed to CIS the requested documents but, obviously, they were never received. He submits:

- (1) Copies of pay statements dated from February 14, 2000 through December 7, 2003, inclusive.
- (2) A copy of a receipt for payment of personal property tax dated February 14, 2000.
- (3) A copy of a receipt from Urgente Express dated September 2000.
- (4) A copy of a receipt for vehicle state inspection dated December 14, 2000.
- (5) Copies of receipt of payments from Montgomery White Oak dated April 1, 2001, July 1, 2001, and December 1, 2001.
- (6) Copies of motor vehicle registration dated July 10, 2001, and August 19, 2001.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, establishes that the applicant 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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, contained in the record of proceeding, the applicant was requested on February 13, 2002, and again on May 22, 2003, to submit the final court disposition of every charge against him. The applicant failed to respond.

The director determined that the applicant had failed to submit the requested court disposition necessary for the proper adjudication of the application and denied the application on March 19, 2004.

On appeal, the applicant states that he is providing the court dispositions of his arrests; unfortunately, some of the records are not available.

The record reveals the following offenses:

- (1) On December 4, 1997, in the Fairfax County General District Court, Criminal Division, Virginia, Case No. [REDACTED] (arrest date October 19, 1997) the applicant was convicted of escape without force or violence or setting fire to jail, Virginia Code 18.2-479, a Class 1 misdemeanor. He was sentenced to serve 60 days in jail, and ordered to pay \$200 in fines and costs.
- (2) On December 4, 1997, in the Fairfax County General District Court, Criminal Division, Virginia, Case No. [REDACTED] (arrest date October 19, 1997) the applicant was convicted of destruction of property, Virginia Code 18.2-137, a Class 1 misdemeanor. He was sentenced to serve 30 days in jail, and ordered to pay \$502 in fines and costs.
- (3) The FBI report shows that on October 10, 1998, the applicant was arrested for Count 1, possession of burglarious tools; Count 2, grand larceny; and Count 3, grand larceny. The records of the Fairfax County General District Court, Criminal Division, Virginia, under Case No. [REDACTED] furnished by the applicant, shows that a *nolle prosequi* was entered as to Count 1. Although the FBI report shows that a *nolle prosequi* was also entered as to Counts 2 and 3, the actual court disposition was not provided by the applicant.

- (4) On October 13, 1998, in the Fairfax County General District Court, Criminal Division, Virginia, Case No. [REDACTED] the applicant was convicted of grand larceny, a felony. He was sentenced to 12 months in jail-11 months suspended, placed on probation for a period of one year, and ordered to pay \$122 in fines and costs.
- (5) On November 2, 1998, in the Fairfax County General District Court, Criminal Division, Virginia, Case No. [REDACTED] (arrest date September 21, 1998), the applicant was convicted of drunk in public, a misdemeanor. He was ordered to pay \$55 in fines and costs.
- (6) On November 2, 1998, in the Fairfax County General District Court, Criminal Division, Virginia, Case No. [REDACTED] the applicant was convicted of petit larceny, a misdemeanor. He was ordered to pay \$122 in fines and costs.
- (7) The applicant submits letters from the Fairfax County General District Court, Virginia, indicating that the court received the applicant's request for copies of Case Nos. [REDACTED] and [REDACTED] but they are unable to locate any record of the offenses listed. However, no other information, such as the types of offenses committed and dates of the offenses, are shown on the court's letters.
- (8) The FBI report shows that on October 10, 1998, the applicant was arrested or received by the Fairfax Police Department for Count 1, grand larceny; Count 2, grand larceny; and Count 3, destroy property. The report shows that the applicant was subsequently convicted of (a) petit larceny, and (b) destroying property-4 counts. No evidence was furnished to indicate whether No. (a) relates to No. 6 above. Further, no court disposition was furnished to indicate whether the applicant was in fact convicted of No. (b).
- (9) The FBI report shows that on October 12, 1998, the applicant was arrested for destroying property. The report shows that the applicant was subsequently convicted of (a) destroying property and (b) attempted grand theft. No evidence was furnished to indicate whether No. (b) relates to No. 4 above. Further, no court disposition was furnished to indicate whether the applicant was in fact convicted of No. (a).

The most commonly accepted definition of a crime involving moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *Jordan v. De George*, 341 U.S. 223, reh'g denied, 341 U.S. 956 (1951). The crime of theft or larceny, whether grand or petty, involves moral turpitude (Nos. 4 and 6 above). *Matter of Scarpulla*, 15 I&N Dec. 139 (BIA 1974); *Morasch v. INS*, 363 F.2d 30 (9th Cir. 1966). Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act due to his convictions of larceny, found to be crimes of moral turpitude.

The applicant is ineligible for TPS due to his record of at least one felony and four misdemeanor convictions (detailed in Nos. 1, 2, 4, 5, and 6 above), and because he is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Sections 244(c)(2)(B)(i) and 244(c)(1)(A)(iii) of the Act. Consequently, the director's decision to deny the application 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.