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U.S. Citizenship  
and Immigration  
Services

MI

FILE:

[REDACTED]  
[EAC 01 212 51156]

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. 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 denied the application because the applicant failed to establish he had continuously resided in the United States as of February 13, 2001, and had been continuously physically present in the United States since March 9, 2001, to the date of filing his application

On appeal, the applicant submits documentation to establish his 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.

The record reveals the following offenses:

- (1) On July 19, 1995, the applicant was arrested for “Viol of Prob A Mis” by the East Meadow Correction Facility; and,
- (2) On December 7, 1996, the applicant was arrested for “Assault 2” by the Suffolk County Police Department.

Pursuant to a letter dated May 19, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to the director’s May 19, 2003 request. The director, therefore, denied the application on July 18, 2003, because the director determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, the applicant submits the following documentation: a letter dated August 3, 2003, from Ms. [REDACTED] Vice President of Specialty Landscapes and Design, Inc., who stated that the applicant has worked for her company since 1999; a transcript of record dated August 4, 2003, from the District Court of Suffolk County indicating that the applicant plead guilty to two counts of Harassment in the Second Degree (Section 240.26); and a certificate of disposition dated July 14, 2003, from the District Court of Nassau County reflecting that a prior conviction was vacated and that applicant was sentenced to one year probation.

A review of the final disposition from the District Court of Suffolk County reflects that the applicant plead guilty to and was convicted of two counts of Harassment in the Second Degree (Section 240.26), a violation.

New York Penal Law Section 70.15 provides that a "violation" carries a maximum sentence of imprisonment of fifteen days. Consequently, for immigration purposes, this offense, Harassment in the Second Degree, is considered a "misdemeanor" as defined by 8 C.F.R. § 244.1.

The applicant is not eligible for temporary protected status because the alien has been convicted of two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

The employment letter from Ms. [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. In addition, Ms. [REDACTED] statements regarding his employment are not supported by corroborative evidence, such as check payment stubs or earnings statements. A review of the record of proceedings reflects that the applicant submitted copies of his Verizon and Bell Atlantic telephone billing statements dated April 19, 2001 and June 19, 2000, respectively. However, the dates of these statements do not cover the beginning of the requisite time periods for El Salvadoran TPS. In addition, the record contains copies of hand-written receipts from Telestar 1 Inc. dated May 11, 2001 and June 7, 2001, which post-date the beginning of the requisite time periods for continuous residence and continuous physical presence 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 the applicant is not sufficient 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.