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

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FILE:   
[SRC 01 204 54142]

Office: VERMONT SERVICE CENTER

Date: **OCT 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 by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 provide the final disposition of his arrest on December 24, 1997. The director also determined that the applicant failed to establish his continuous residence in the United States since February 13, 2001, and failed to establish his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant states, "counsel will attempt to obtain certified disposition of Texas case." The applicant also states that counsel has attached "evidence of respondent's residency." Additional documentation has been submitted in support of the appeal.

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 designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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. 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 record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 7, 2001.

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 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).

The first issue raised by the director to be addressed in this proceeding is whether the applicant provided the final disposition of his arrest on December 24, 1997.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The record indicates that the applicant, based upon the fingerprints he provided which were forwarded to the Federal Bureau of Investigation on March 20, 2003, was arrested on September 19, 1991, by the Sheriff's Office Dallas, Texas and charged with "1-BURG VEH 2305."

In a notice of intent to deny, dated February 25, 2004, the applicant was requested to:

Provide certified judgment and conviction documents from the court(s) that address each of the following:

- a. The final disposition (your sentence, probation, dismissal, etc.) of every charge against you. The charge and disposition must be specifically identified (not just numeric citations or codes).
- b. If you were convicted of any charge, you must also provide evidence showing whether the charge for which you were convicted was classified as a felony or misdemeanor. You may submit a copy of the pertinent statute, sentencing guide, or statement from the court clerk or police department for this purpose.

The applicant was also requested to submit evidence to establish his continuous residence and his continuous physical presence in the United States during the requisite timeframes. The record indicates that the applicant failed to respond to the notice of intent to deny.

The director denied the application on July 7, 2004, as the applicant failed to provide "certified judgment and conviction documents from the court(s) that address the final disposition of every charge against you." The director also found that 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 since March 9, 2001.

On appeal, counsel submits a letter, dated December 23, 2004, from the records clerk of the City of Irving Police Department, who states:

A search of our local records reveals a City of Irving Criminal record on

Name

[REDACTED]  
Date of Birth

Since November 1, 1991

12,14/04: PI; 12/25/91: PI; 12/02/91: PI

Counsel also submits a letter from the Acting Unit Commander Records Unit Support Services Bureau Dallas Police Department, who states, in pertinent part, the following:

A search of the Dallas Police Department's arrest records reflects no arrest on file for:

Name: [REDACTED]

Date of Birth [REDACTED]

The search is for arrest made in the City of Dallas only. It does not include criminal record information from state or federal TCIC or NCIC files.

Counsel also provides a notice, dated December 18, 2004, to the applicant from [REDACTED] of Dallas County, Texas, Sitting As A Magistrate, advising the applicant of the following: "BEING A PERSON UNDER ARREST, AND THAT I HAVE IN CLEAR LANGUAGE INFORMED THE PERSON ARRESTED OF THE ACCUSATION AGAINST HIM AND OF ANY AFFIDAVIT FILED HEREWITH, AND OF HIS RIGHT TO RETAIN COUNSEL... [REDACTED] NO BOND ALLOWED REMAND TO CUSTODY OF OSO."

The documentation presented on appeal does not comply with the Service's request for a certified copy of the final court disposition of the applicant's arrest on September 19, 1991. Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

The remaining issues raised by the director to be addressed in this proceeding are whether the applicant has continuously resided in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001.

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.

As previously stated, the applicant failed to respond to the notice of intent to deny, dated February 25, 2004. The director found that the applicant failed to establish his continuous residence and his continuous physical presence in the United States during the requisite periods and consequently, denied the application.

On appeal, counsel submits: three copies of the applicant's Form W-2, Wage and Tax Statement, for 2002 from employers GMRI TEXAS LP, COSMO CLEANING OF TEXAS, INC., and EL FENIX, INC.; a copy of Form 1099-MISC, Miscellaneous Income, for the year 2001, which shows "Nonemployee compensation as 6, 148.60;" a copy of an account summary from Verizon, dated November 4, 2002; and, copies of receipts from "gigante express" dated September 10, 2001 and September 10, 2002.

The applicant has provided no additional documentary evidence on appeal to demonstrate that he has been continuously residing in the United States since February 13, 2001, and that he has been continuously physically present in the United States since March 9, 2001. The W-2 forms do not cover the timeframes from the onset of the qualifying periods (February 13, 2001 and March 9, 2001) to the date of the applicant's filing of his TPS application on May 7, 2001. The remaining documentation submitted is not sufficient in establishing the applicant's day-to-day living in the United States during the requisite timeframes. The applicant has not met the continuous residence and continuous physical presence criteria described in 8 C.F.R. § 244.2 (b) and (c). Consequently, the director's decision to deny the application for temporary protected status for these reasons 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.