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

MI

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: **OCT 17 2005**

[EAC 01 197 52873]

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 a request for evidence to establish that he: (1) had continuously resided in the United States since February 13, 2001; (2) had been continuously physically present from March 9, 2001, to the date of filing the application; (3) is a citizen or national of El Salvador; and (4) had not been convicted of a felony or two or more misdemeanors committed in the United States.

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 alien 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 § 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 condition described in paragraph (f)(2) of this section.

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 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 Citizenship and Immigration Services (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 in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing the TPS application.

The record shows that the applicant filed his application on May 14, 2001. In support of his application, the applicant submitted:

1. A copy of his El Salvadoran passport issued in Los Angeles, California, on March 13, 1994.
2. A copy of an undated letter from Discover Card.
3. A copy of a lease agreement dated February 1, 2001.
4. A statement dated March 14, 2001, from [REDACTED] indicating that she has known the applicant for four years, that they met through mutual friends, and at one time dwelled in the same apartment building at [REDACTED]

In a notice of intent to deny dated May 16, 2003, the applicant was requested to submit additional evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond. Therefore, the director denied the application on June 21, 2003.

On appeal, the applicant asserts that in January 2003 he moved from East Boston, Massachusetts, to his current address in Central Falls, Rhode Island, and that although the Postal Service forwarded to his current address the director's decision dated June 21, 2003, he never received the director's request for additional evidence dated May 16, 2003. He submits the following:

5. A copy of a gas utility bill dated February 11, 2000.
6. A statement dated August 20, 2003, from [REDACTED] Ayala indicating that she met the applicant through mutual friends in Massachusetts in 1998, that they lived together in Chelsea, MA from 1999-2000, that they have been close friends, communicate regularly, and see each other at least two or three times a week.
7. A letter dated August 21, 2003, from East Boston Neighborhood Health Center indicating that the applicant was a patient at the Center on September 8, 2001, and August 15, 2002; also included are diagnosis and treatment information for this period.
8. A copy of an application for motor vehicle insurance effective September 5, 2001.

The evidence furnished by the applicant, in conjunction with other evidence included in the record of proceeding, establishes that the applicant satisfies 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 second issue in this proceeding is whether the applicant has established that he is a citizen or national of El Salvador.

In a notice of intent to deny dated May 16, 2003, the applicant was requested to submit evidence to establish that he is a citizen or national of El Salvador. The applicant failed to respond. Therefore, the director denied the application on June 21, 2003.

On appeal, the applicant submits a copy of his El Salvadoran birth certificate with English translation.

It is noted that the record of proceeding contains a copy of the applicant's El Salvadoran passport (No. 1 above) previously furnished by the applicant. Therefore, the applicant also has overcome this finding of the director.

The third issue in this proceeding is whether the applicant had been convicted of a felony or two or more misdemeanors committed in the United States.

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 advised that the report revealed that he has a record of arrest on June 14, 1998, on October 27, 2000, on January 15, 2001, and on January 27, 2001. In a notice of intent to deny dated March 16, 2003, the applicant was requested to submit the final court disposition of every charge against him, including his arrests as listed. The applicant failed to respond. Therefore, the director denied the application on June 21, 2003.

The record reveals the following offenses:

1. On June 15, 1998, in Quincy District Court, Massachusetts, [REDACTED] (arrest date June 14, 1998), the applicant was indicted for Count 1, larceny over \$250, c266 §30 of the Massachusetts General Law (MGL), a felony; and Count 2, assault and battery, c265 §13A MGL, a misdemeanor. On June 30, 1998, the applicant entered a plea of guilty as to both Counts 1 and 2, and the court accepted the "tendered Plea or Admission." The applicant was placed on probation for a period of one year and ordered to pay \$235 in court costs and fee as to Count 1. He was placed on probation for a period of one year as to Count 2.
2. The FBI report shows that on May 24, 1999, in Boston, Massachusetts, the applicant, under the name of [REDACTED] was arrested for operating without a license. The final court disposition of this arrest is not contained in the record.
3. The FBI report shows that on October 27, 2000, in Boston, Massachusetts, the applicant was arrested for Count 1, altered license or registration; Count 2, false name to a police officer; and Count 3, attaching plates. The final court disposition of this arrest is not contained in the record.
4. The FBI report shows that on January 15, 2001, in Everett, Massachusetts, the applicant, under the name of [REDACTED] was arrested for falsify/steal motor vehicle document. The final court disposition of this arrest is not contained in the record.
5. The FBI report shows that on January 27, 2001, in Brookline, Massachusetts, the applicant was arrested for Count 1, "90/23/D-LICENSE SUSPENDED, OP MV WITH C90 S23;" and Count 2, "085:016-GIVE OFFICER FALSE NAME." The final court disposition of this arrest is not contained in the record.