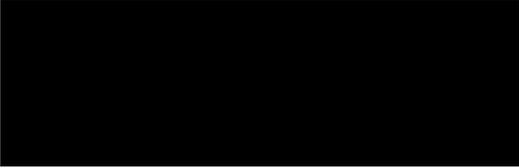




U.S. Citizenship  
and Immigration  
Services

M1



FILE: [REDACTED]  
[EAC 02 176 51492]

Office: Vermont Service Center

Date: 6/27/2010

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:



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.

*for*   
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 failed to respond to a request for evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The applicant also failed to provide the court dispositions of the charges relating to his criminal record. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, submits additional evidence in support of the applicant's eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 under § 244.3;
- (e) is not ineligible under § 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.

- (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.

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.

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. 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 Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

Further, 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.  
8 C.F.R. § 244.1.

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.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses:

- (1) On January 29, 1994, the applicant was arrested for “Menacing 2<sup>nd</sup> 1316” by the Piermont Village Police Department;

- (2) On January 29, 1994, the applicant was arrested for "Res Arr" by the Piermont Village Police Department; and,
- (3) On January 29, 1994, the applicant was arrested for "Crim Pos Weap-4 5112" by the Piermont Village Police Department.

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).

Pursuant to a notice of intent to deny the application for TPS dated May 9, 2003, the applicant was requested to submit the final court dispositions for the charges as detailed above. The applicant was also requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant did not respond to the director's May 9, 2003 request. The director, therefore, denied the application on August 6, 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.

Counsel filed an appeal which was received by the VSC on October 2, 2003, after the prescribed 30 days. The director treated the appeal as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(1)(v)(B)(2), and rendered a decision on the merits of the case. After a complete review of the record of proceedings, including the motion, the director determined that the applicant had failed to establish his eligibility for TPS. The director, therefore, affirmed her previous decision and denied the application on March 19, 2004. The director noted in her decision to deny the application that the applicant had been convicted of two misdemeanors, rendering the applicant ineligible for TPS.

On April 19, 2004, the applicant filed an appeal to the director's March 19, 2004 decision, which is now before the AAO. On appeal, counsel provides four certificates of dispositions dated April 14, 2004, from the Piermont Justice Court of Rockland County, New York, indicating that the applicant was charged with the following offenses:

- (1) On September 8, 1993, the applicant was charged with "Open Container of Alcohol." The applicant plead guilty and was fined \$175 on September 29, 1993;
- (2) On July 4, 1993, the applicant was charged with "Disorderly Conduct." The applicant plead guilty and was fined \$50 on July 28, 1993;
- (3) On September 26, 1990, the applicant was charged with "Menacing." The applicant plead guilty to "Harassment" (PL 240.25) and was fined \$20 on November 14, 1990; and,
- (4) On March 23, 1994, the applicant was charged with "Menacing 2<sup>nd</sup>", "Crim Poss Weapon 4<sup>th</sup>", "Resisting Arrest", and "Crim Mischief 4<sup>th</sup>". The applicant plead

guilty to "Menacing" to cover all charges and was sentenced to 6 months in custody.

The first issue in the proceedings concerns the charges relating to the applicant's criminal record.

Disorderly conduct, 240.20 PL, can carry a possible sentence of imprisonment for up to fifteen days. Therefore, for immigration purposes, this offense is considered a "misdemeanor" as defined by 8 C.F.R. § 244.1. Furthermore, Menacing, 120.15 PL, is a misdemeanor under the Penal Law of the State of New York. Additionally, Menacing in the Second Degree, 120.14 PL, is a misdemeanor under the State of New York Penal Law. It is noted that the applicant was sentenced to 6 months in custody for the charge of Menacing in the Second Degree.

The applicant is not eligible for temporary protected status because he has been convicted of three 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 qualifying continuous residence and continuous physical presence in the United States.

A review of the record of proceedings reflects that counsel provided the following documentation in support of the applicant's continuous residence and continuous physical presence in the United States during the requisite time periods: copies of utility bills dated December 8, 2000, January 25, 2001, and March 26, 2001 from United Water and Pike County Light and Power Company; a copy of an earnings statement from Rockland Bakery, Inc. bearing a pay date of January 12, 2001 for the pay period ending January 7, 2001; and copies of Cablevision billing statements dated February 1, 2001 and March 17, 2001. The record also contains a copy of a letter dated March 23, 2002, from [REDACTED] who stated that she had known the applicant since April 2000; a copy of a United States Postal Service Customer's Receipt dated January 27, 2001; copies of two Western Union money transfer receipts; and a copy of an envelope bearing an illegible postmark addressed to the applicant in the United States.

The statement from [REDACTED] indicates that she has known the applicant since April 2000; however, she does not specify where the applicant had resided during their acquaintance. Letters from acquaintances are not, by themselves, persuasive evidence of continuous residence and continuous physical presence. The single money transfer receipt from Western Union is dated April 21, 2001, after the beginning of the requisite time periods for El Salvadoran TPS.

Moreover, the photocopied earnings statement from Rockland Bakery, Inc. appears to have been altered as the original employee name and dates seem to have been covered-over and the applicant's name and earlier dates have been inserted in their place. It is also noted that the earning statement reflects a Social Security number of [REDACTED] however, the applicant indicated on his applications for temporary protected status and employment authorization that his Social Security number is [REDACTED]. In addition, the earnings statement reflects year-to-date earnings of \$3,142.50 for the first seven days of the year. Also, the copies of the utility bills and Cablevision billing statements appear to have been altered as the original name and address have been covered-over and the

applicant's name and address inserted in their place as well. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the apparent alterations of the documents mentioned above. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to satisfy 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 this ground 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 TPS 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.