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FILE:

[REDACTED]
[EAC 02 075 50992]

OFFICE: VERMONT SERVICE CENTER

DATE: OCT 31 2005

IN RE:

Applicant:

[REDACTED]

APPLICATION:

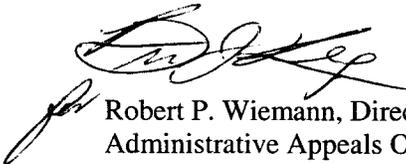
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

[REDACTED]

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 establish 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 application.

On appeal, counsel 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.

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 record shows that the applicant filed his TPS application on December 21, 2001. In a notice of intent to deny dated May 9, 2003, the applicant was advised that the Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested on August 6, 1996, in New Jersey for aggravated assault. Therefore, he was requested to submit the final court disposition of every charge against him. He was also requested to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application.

The director noted that the evidence furnished by the applicant, in response to his request, did not provide proof of presence in the United States as of February 13, 2001, and that substantial evidence was missing from May 2000¹ through June 2001. The director, therefore, denied the application on August 4, 2003.

On appeal, counsel submits the following:

1. A statement dated August 16, 2003, from [REDACTED] indicating that he has known the applicant for approximately twenty five years since they both resided in El Salvador, that the applicant arrived in the United States in 1999 and resided in New Jersey for eleven years, and that the applicant has now resided in Washington, DC, for about a year and a half.
2. A copy of a Certificate of Title for vehicle ownership issued on December 29, 1995.

¹ Regulations at 8 C.F.R. § 244.2 requires only that the applicant establish continuous residence since February 13, 2001.

3. Copies of court documents relating to his arrests, including the dismissal by the court of the August 6, 1996 offense for assault by auto, NJS 2C:12-1C, on May 9, 2000.

(No. 1 above) indicates that he has been residing in the Washington, DC Metropolitan Area for approximately ten years and that he was acquainted with the applicant since they resided in El Salvador. However, he failed to provide any details or specifics regarding the basis of his acquaintanceship with the applicant, how he obtained the information that the applicant came to the United States in 1991 and resided in New Jersey, the address where the applicant resided in New Jersey, and how often he saw the applicant during their acquaintance.

Regulations at 8 C.F.R. § 244.9(a)(2) do not expressly provide that personal affidavits on an applicant's behalf are sufficient to establish the applicant's qualifying continuous residence or continuous physical presence in the United States. Moreover, this one affidavit, provided by the applicant to establish his qualifying residence in the United States, was not supported by any other corroborative evidence. The applicant claimed to have lived in the United States since May 1, 1991. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his claim; however, no such evidence has been provided.

The applicant has provided evidence that he was present in the United States as of May 2000. He has also provided ample evidence to establish continuous physical presence from June 2001 to the date he filed his application on December 21, 2001. However, no documentary evidence was furnished to establish continuous residence and continuous physical presence from February 13, 2001 to June 2001.

The applicant has failed to establish that he has met the criteria for continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, as described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, it is noted that the director, in his notice of intent to deny dated May 9, 2003, requested that the applicant submit the final court disposition of every charge against him. The director, however, failed to address the applicant's arrests and/or convictions in his decision to deny dated August 4, 2003.

An alien shall not be eligible for temporary protected status 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).

The record reveals the following offenses:

- (1) On August 6, 1996, in New Jersey, the applicant was arrested for aggravated assault, NJS 2C:12-1B. The applicant submitted the records of the Ramsey Municipal Court, Ramsey, New Jersey, indicating that Complaint #W-1996-288, 2C:12-1C (assault by auto) was dismissed on May 9, 2000. The applicant, however, failed to submit additional documentation, such as the indictment record, court docket, or records of the hearing to show whether the applicant was not convicted of the offense, or whether the applicant was in fact convicted and the court subsequently dismissed the conviction on May 9, 2000. Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

- (2) A copy of the State of New Jersey, Division of Motor Vehicles, "Confirmation of Suspension by Court," indicates that the applicant's driving privilege was suspended as of May 9, 2000, for 180 days, because the applicant was convicted of leaving the scene of an accident-property damage (DT: 08/06/1996, B50 V 129B), Ramsey Municipal Court. The actual court disposition of this offense is not contained in the record.
- (3) A copy of a receipt from [REDACTED] Municipal Court for payment of fines on May 23, 2000, under Docket No. 96-1942, for violation of 39:4-96 (reckless driving). The court disposition of this offense is not contained in the record.

The applicant has failed to provide the complete, final court dispositions of all charges against him as requested by the director on May 9, 2003. Therefore, the application will also be denied for this reason.

The record contains a Warrant of Deportation, Form I-205, issued in Newark, New Jersey, on November 14, 1996, based on the final order of removal by an immigration judge on November 14, 1996 (File [REDACTED]).

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.