

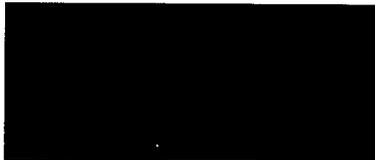
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**



MI

FILE:

[REDACTED]
[EAC 01 234 57410]

Office: VERMONT SERVICE CENTER

Date: **SEP 30 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:



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 matter 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 establish he had continuously resided in the United States since February 13, 2001 and had been continuously physically present in the United States since March 9, 2001. The director also found that although requested, the applicant had not submitted the final disposition of his arrest on September 26, 1999.

On appeal, counsel submits additional documents in support of the application.

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.

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.

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. An extension of the TPS designation has been granted 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).

Upon initial submission, the applicant submitted the following documentation.

1. Copies of six United States Postal Service customer money order receipts. Two receipts not showing the recipient or the sender are dated February 16, 2001 and are drawn in the amounts of \$300 and \$500. One receipt, payable to a person in El Salvador, is dated February 16, 2001 and is drawn in the amount of \$500. Two receipts payable to persons in El Salvador from [REDACTED] are undated and are for the amounts of \$80 and \$150. These two receipts are undated, illegible as to the recipient and sender and are each in the amount of \$80.

On November 3, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. He was also requested to provide court disposition documentation concerning his arrest on September 26, 1999 for "operating a motor vehicle while intoxicated 2nd offense and unlicensed driver." The applicant did not respond to that request.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 25, 2004. On appeal, the applicant submits the following documentation:

2. A copy of a letter dated March 19, 2004 from [REDACTED] who states he has been her tenant in New York since May 1999.
3. Copies of three rent receipts for \$50 each from [REDACTED] dated March 29, 1999 for one week's rent; January 1, 2001 for one week's rent ending "Feb- /01;" and, March 1, 2004 for one week rent ending "April / 04."
4. Copies of Urgente Express International Courier receipts for articles sent by the applicant to persons in El Salvador on February 8, 1999, June 8, 1999 and September 4, 2002.
5. Copies of the applicant's telephone bills in Brooklyn dated October 23, 2003 and February 23, 2003.
6. A copy of an undated letter from Metropolitan Telecommunications to the applicant in Brooklyn sending him a new calling card.
7. A copy of the applicant's emergency room discharge instructions dated December 2, 2002 from Wyckoff Heights Medical Center in Brooklyn.
8. A copy of the applicant's receipt dated December 13, 2001 from [REDACTED] in Ridgewood, New York.
9. A copy of an unsigned letter dated December 11, 2001 from the Social Security Administration to the applicant in Brooklyn.
10. A copy of the applicant's IRS Form W-2, Wage and Tax Statement, for 2002 from [REDACTED] in New York.
11. A copy of the applicant's IRS Form W-2, Wage and Tax Statement, for 2003 from [REDACTED] Food Corporation in Brooklyn.
12. A copy of an initialed certificate of disposition number 15012 from the Criminal Court of the City of New York for the County of Queens dated March 12, 2004 showing that the applicant pled guilty to "PG VTL1192.2" operating a motor vehicle while intoxicated - 2nd offense. The date of arrest is shown as September 26, 1999 and the "NYSID Number" is [REDACTED]
13. A copy of the applicant's conditions of conditional discharge concerning docket number [REDACTED] dated October 25, 1999 from the Criminal Court of the City of New York for the County of Queens. The applicant was placed under a conditional discharge for a one year period and ordered to pay a \$500 fine for his conviction of the offense of VTZ 1192-2.
14. A copy of a notice from the New York City Criminal Justice Agency requiring the applicant to come to Criminal Court on October 25, 1999 with regard to docket # [REDACTED]

15. A copy of an order of suspension or revocation effective October 25, 1999 from the New York State Department of Motor Vehicles prohibiting the applicant from acquiring a driver's license in New York State for at least six months.

The letter dated March 19, 2004 from the applicant's landlord (Item #1) who states he has been her tenant in New York since May 1999 is supported by copies of three rent receipts. The receipts (Item # 3) are for \$50 each from his landlord dated March 29, 1999 for one week's rent; January 1, 2001 for one week's rent ending "Feb- /01," and March 1, 2004 for one week's rent ending "April / 04." The receipts are confusing as they appear to have been written for one-week periods and one-month periods simultaneously. This discrepancy along with the fact that the rent receipts are surfacing only on appeal which is late in the adjudicative process calls into question the validity of these documents. Doubt cast on any aspect of the evidence as submitted may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence; any 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. (Comm. 1988).

Other than the letter and receipts from his landlord, the applicant has not submitted any evidence to establish his continuous residence or continuous physical presence in the United States during the period from June 8, 1999, to July 25, 2001. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). After reviewing the above evidence, it is determined the director correctly denied the application. Consequently, the director's decision to deny the application for TPS will be affirmed.

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 Federal Bureau of Investigation fingerprint results report shows that the applicant was arrested September 26, 1999 in New York, New York, for operating a motor vehicle while intoxicated (2nd offense) and driving a motor vehicle without a license. On November 3, 2003, the applicant was requested to submit the final court disposition of his arrests. In response, the applicant furnished an initialed certificate of disposition number 15012 from the Criminal Court of the City of New York for the County of Queens (Item # 12), a copy of a conditional discharge (Item # 13) and a notice to appear in court (Item #14).

The court disposition forwarded by the applicant carries the following notation. "(Caution: this document is not official unless embossed with the court seal over the signature of the court official.)" Although the document appears to have been initialed by a court official, it does not contain the signature of that official and is not embossed with the court seal. Therefore, following the court's instruction, the court disposition forwarded by the applicant is not an official court document. Additionally, although required to do so, the applicant has not supplied any information concerning what was apparently his first operating a motor vehicle while intoxicated arrest and conviction that must have proceeded his being convicted for a second violation for the same crime. It is determined that the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Accordingly, the director's decision to deny the application for this additional reason will 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.