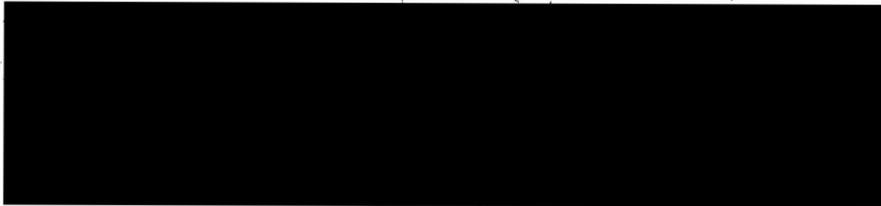


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Services

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FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: AUG 14 2006

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: 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, Chief
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 determined that the applicant had failed to submit all of the requested court dispositions of his arrests, and also to submit sufficient evidence to establish continuous residence and continuous physical presence in the United States. The director, therefore, denied the application.

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.

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, 2007, 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 from March 9, 2001, to the date of filing the application.

The record shows that the applicant filed his TPS application on August 2, 2001. In support of his application, the applicant submitted:

1. Copies of his El Salvadoran passports issued in Washington, DC, on November 18, 1996, and on November 12, 2001.
2. A statement dated July 22, 2001, from [REDACTED] indicating that he has known the applicant since 2000, the year the applicant was working at the same company he used to work.
3. A statement dated July 30, 2001, from [REDACTED] indicating that she has known the applicant since March 2001.
4. Copies of receipts for the rent of a room at [REDACTED] January 1, 2001; February 1, 2001; March 1, 2001; and April 1, 2001.
5. A copy of an identification card of his daughter issued on October 13, 2002.

In a notice of intent to deny dated July 11, 2003, the applicant was requested to submit additional evidence establishing his continuous residence and continuous physical presence in the United States during the requisite period, and final court dispositions of all of his arrests. In response, the applicant submitted the court disposition

of his April 9, 1998, arrest in Maryland; however, he neither addressed nor submitted evidence to establish his residence and physical presence. Therefore, the director denied the application on October 16, 2003.

On appeal, the applicant asserts that he is eligible for TPS because he entered the United States on or about November 18, 1996. He submits evidence previously furnished and contained in the record. He also submits the following:

6. A statement dated November 5, 2003, from [REDACTED] indicating that the applicant lived with him and his family at [REDACTED] December 1998 through December 2000, and paid a monthly rent of \$200. He included copies of rent receipts for this period.
7. Copies of miscellaneous receipts, pay statements, and postmarked envelopes all dated during the period 1996 and 1998.

The handwritten rent receipts (No. 4 above) are generic and have little evidentiary value. No supporting evidence, such as a copy of a rental agreement or a notarized affidavit from his landlord was furnished. While [REDACTED] (No. 6 above) stated that the applicant lived with him and his family at [REDACTED] from December 1998 through December 2000, it is noted that the receipts in No. 4 above are also for rent at [REDACTED] and were signed by a [REDACTED]. Further, the statement from [REDACTED] was not notarized or attested to under penalty of perjury. Additionally, the applicant did not list this address as his residence in any documentation contained in the record.

The statements from [REDACTED] and [REDACTED] (Nos. 2 and 3 above) attest to their acquaintance with the applicant; however, they failed to provide any specifics regarding the nature, circumstances, or origin of the affiants' acquaintanceship with the applicant, and the address where the applicant resided during the time of 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, the statements provided by the applicant to establish his qualifying residence in the United States were not supported by any other corroborative evidence.

The record shows that the applicant was present in the United States since 1996, prior to the requisite period required to establish continuous residence in the United States. However, the applicant has furnished no documentary evidence to establish that he has continuously resided and has been continuously physically present in the United States since February 13, 2001, to the date of filing the application on August 2, 2001. The remaining evidence contained in the record only establishes the applicant's continuous residence and continuous physical presence since November 2001, after the date the TPS application was filed. The applicant claimed to have lived in the United States since 1996. 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.

It is noted that the director erroneously stated that the applicant failed to establish continuous residence in the United States since December 30, 1998, and continuous physical presence from January 5, 1999, to the date of filing the application. These periods are for TPS offered for Hondurans and Nicaraguans. However, the director did request that the applicant submit evidence to establish continuous residence in the United States since February 13, 2001, to the date of filing the application on August 2, 2001. While the applicant did furnish evidence establishing his residence prior to February 13, 2001, no documentary evidence was furnished for the dates from February 13, 2001, to the date of filing the application.

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 for this reason will be affirmed.

The next issue in this proceeding is whether the applicant has been convicted of a felony or two of more misdemeanors.

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 felony or 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.

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.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

In a notice of intent to deny dated July 11, 2003, the applicant was requested to submit the final court disposition of every charge against him, including the final disposition of his arrest listed on the Federal Bureau of Investigation (FBI) fingerprint results report. In response, the applicant submitted the court disposition of the following:

- (1) On April 9, 1998, in the District Court of Maryland, Prince George's County, Case No. [REDACTED] the applicant, under the name of [REDACTED] was convicted of assault-2nd degree. He was

sentenced to imprisonment for a term of 18 months, suspended, and placed on probation for a period of 2 years, ordered to pay \$55 in fines and costs, and pay restitution in the amount of \$3,194.

Maryland Criminal Law § 3-203 states that "a person who violates this section is guilty of the misdemeanor of assault in the second degree and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$2,500 or both." While 8 C.F.R. § 244.1 defines a "felony" as a crime punishable for a term of more than one year, the regulation provides for an exception 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. In this case, the applicant does not qualify for this exception, pursuant to section 244 of the Act, because he was sentenced to serve 18 months in prison. Therefore, the applicant was, in fact, convicted of a felony, not a misdemeanor.

The director determined that the applicant failed to submit all of the requested court dispositions of his arrests and denied the application on October 16, 2003. The record reflects the following offenses:

- (2) The FBI fingerprint results report shows that the applicant was arrested in Hyattsville, Maryland, on March 7, 1997, for possession with intent to distribute. On appeal, the applicant submits a printout report from the Criminal Justice Information System (CJIS), Central Repository, Pikesville, Maryland, indicating that a determination of *nolle prosequi* was made by the States Attorney on the charges of (1) distribution of a controlled, dangerous substance, (2) possession of a controlled dangerous substance with intent to distribute, (3) possession of a controlled dangerous substance, (4) conspiracy/distribution of a controlled dangerous substance, and (5) hire a minor to distribute a controlled dangerous substance.

It is noted, however, that the CJIS printout relating to the applicant's arrest, detailed in No. 2 above, was obtained from Maryland's fingerprint supported criminal history record information (CHRI) system. The applicant failed to submit the final disposition from the court where the case was heard, and to establish that the applicant was, in fact, not prosecuted or convicted of the charges.

The applicant is ineligible for TPS due to his felony conviction, detailed in No. 1 above, and because he failed to provide the final court disposition of his arrest detailed in No. 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application will also be affirmed.

The FBI report shows that the applicant was deported from the United States to El Salvador on December 3, 1991. Additionally, the record shows that the applicant was apprehended near Douglas, Arizona, on December 13, 1995, he was placed in removal proceedings, and a bond was subsequently posted on March 4, 1996, under file number [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.