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[REDACTED]

MM

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: FEB 23 2006

[REDACTED] incorporated therein]

[EAC 01 198 54660]

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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 withdrew the applicant's TPS because the applicant failed to provide the disposition of his arrests.

On appeal, counsel provides a statement.

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 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 section 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 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.

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. 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. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on May 16, 2001.

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 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 issue raised by the director to be addressed in this proceeding is whether the applicant provided the final disposition of his arrest on November 8, 2002.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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.

In a notice of intent to withdraw the approval of the applicant's TPS, dated March 31, 2003, the applicant was advised that he may no longer be eligible for TPS because he had been arrested on November 8, 2002, and charged with possession of a controlled substance. The applicant was also advised that the approval of his TPS would be withdrawn "unless you can submit additional evidence to show that you have been exonerated from these charges." The applicant was requested to submit the court disposition of his arrest.

In response, counsel in a letter dated April 26, 2003, stated that the applicant's "case is currently pending and a disposition of the case will be mailed to your attention upon completion of the case."

On June 24, 2003, the director withdrew the applicant's TPS, because "this charge is still pending or a court disposition for this arrest has not been received.

On appeal, counsel states, in pertinent part, that:

When the applicant was arrested numerous arrests were done by the police involving the same charges. That on June 16, 2003, the applicant finally went before the Criminal Court and a plea was taken under NYS Adjournment in Contemplating of Dismissal. Under the agreement, the Court will place the accused under parole for a specific amount of time and if the accused does not have any further brushes with the law the Court will dismiss the case. In this instant matter, the applicant was given a twelve week [sic] period that the Court will supervise him, and if he completes the time period without any further problems with the law, the case against him will be dismissed. Presently, the time of completion of the program should be in early August. As stated in the attached letter [REDACTED] applicant has come to an agreement with the County of Nassau and is expected to complete the program next [sic] month. Upon the completion of the program, the applicant will be issued a disposition of the case. Therefore, through no fault of the applicant, he was unable to submit to the Bureau any documents under the circumstances and practice of the Criminal Court in Nassau County.

Counsel filed the appeal on July 21, 2003. Counsel indicated that the additional evidence required would be submitted within 30 days. To date, no disposition has been submitted.

The applicant has not complied with the Service's request for a copy of the final court disposition of his arrest on November 8, 2002. Consequently, the director's decision to withdraw the applicant's TPS on this ground will be affirmed.

Beyond the decision of the director, the record contains no documentary evidence to establish that the applicant has been continuously residing in the United States since February 13, 2001, and has been continuously physically present in the United States since March 9, 2001. Therefore, the applicant's TPS must also be withdrawn for this reason.

The applicant's TPS will be withdrawn 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.