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**U.S. Citizenship
and Immigration
Services**

MI

FILE:

[REDACTED]

Office: Vermont Service Center

Date: **JAN 26 2006**

[EAC 02 295 50780]

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:

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 provide the court dispositions of the charges relating to his criminal record.

On appeal, the applicant submits additional documentation in support of his claim of 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 except as provided 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.

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. 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.

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).

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.

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 record reveals the following offenses in Virginia:

- (1) On January 26, 1996, the applicant was arrested for "Petit Larc" by the Fairfax County Police;
- (2) On June 10, 2000, the applicant was arrested for "Concealment Price Alter Merchandise Less Than \$200" by the Fairfax County Police, under the name of Mr. [REDACTED] and,
- (3) On January 17, 2001, the applicant was arrested for "Entering Property W/Int to Damage" by the Fairfax County Police.

Pursuant to a notice of intent to deny the application dated August 11, 2003, the applicant was 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 was also requested to submit the final court dispositions regarding his past arrests as detailed above. In addition, the applicant was requested to provide evidence showing whether the charge for which he was convicted was classified as a felony or misdemeanor. In response, the applicant submitted a copy of one page of his arrest record from the Fairfax County Police Department detailing thirteen arrests between November 29, 2000 and September 17, 2001. The applicant also submitted some evidence relating to his residence and presence in the United States as well. On June 21, 2004, the director denied the application because the applicant did not provide the requested information in order to overcome the grounds for denial. The director noted in his decision that the applicant provided a record check printout from the Fairfax County Police Department indicating that twelve of the applicant's thirteen arrests showed "Disposition Unknown."

The applicant filed an appeal which was received by the VSC on August 2, 2004, after the prescribed period of 33 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 provide the requested documentation relating to the applicant's past arrests. The director, therefore, affirmed the previous decision and denied the application on September 23, 2004.

On October 22, 2004, the applicant filed an appeal to the director's September 23, 2004 decision, which is now before the AAO.

On appeal, the applicant states he was accused and charged with several drunken in public incidents during the years of 2000 and 2001. He further states that during that period of his life he was depressed, and for the last three years he has improved his life. The applicant along with his appeal submits a letter dated October 19, 2004, from Pastor [REDACTED] Senior Pastor of the Iglesia Cristiana Nueva Vida, who stated that the applicant has been an active member of his church from April 2001. The applicant also submits several copies of court dispositions from the Fairfax County Criminal Court and the General District Court of Fairfax County as well as a complete arrest record from the Fairfax County Police Department reflecting forty-four (44) arrests between September 1, 1991 and September 17, 2001.

A review of the court dispositions from the Fairfax County Criminal Court and the General District Court of Fairfax County reflect that the applicant had been charged with at least two misdemeanors and sentenced to serve in jail. Specifically, the applicant plead guilty and was convicted of Trespassing (Virginia Code Section 5-4-1), a Class 1 misdemeanor, on August 29, 2001, and sentenced to 30 days in jail. In addition, the applicant plead guilty and was convicted of Entering property of another for purpose of damaging it, etc (Virginia Code Section 18.2-121), also a Class 1 Misdemeanor, on March 28, 2001, and sentenced to 10 days in jail. It is noted that the applicant has only provided fifteen of the possible forty-four dispositions for his arrests, including those listed in Nos. 1 and 2 above. The applicant has failed to provide the court documents revealing the final court dispositions of all of his arrests.

The applicant is not eligible for temporary protected status because he has been convicted of two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS is affirmed.

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.