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

MM

FILE:

[REDACTED]  
[EAC 02 005 50535]

OFFICE: Vermont Service Center

DATE: **NOV 27 2006**

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center. The application 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 submit requested court documentation relating to her criminal record.

On appeal, the applicant asserts her eligibility for TPS and submits evidence in support of her claim.

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 parole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

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.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested by the Arlington Police Department on May 26, 2001, and charged with "Assault & Battery – Family Member" under her alias name of [REDACTED] born on July 27, 1970. It is also noted that her country of birth on the report is indicated as "Unlisted."

Along with her application, the applicant submitted the following documentation:

- (1) An affidavit dated August 25, 2001, from her husband, Mr. [REDACTED] who stated that his wife resided at [REDACTED] Arlington, Virginia since October 9, 2001;
- (2) An affidavit dated August 25, 2001, from Mr. [REDACTED] who stated that the applicant had lived [REDACTED] Arlington, Virginia since October 9, 2001; and,
- (3) Copies of her El Salvadoran personal identification card and her birth certificate along with an English translation.

Pursuant to a letter dated May 19, 2004, the applicant was requested to submit the final court disposition for each of the charges detailed above. In addition, if convicted, the applicant was also requested to provide evidence showing whether the charge for each arrest was classified as a felony or misdemeanor. The

applicant was also requested to submit evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. In response, the applicant submitted the following documentation:

- (4) An affidavit dated June 12, 2004, from her husband, Mr. [REDACTED] who stated that his wife arrived the United States in 1997, and that she has been a housewife and taking care of their daughter; therefore, she cannot provide any evidence of employment;
- (5) An affidavit dated June 15, 2004, from her sister, Ms. [REDACTED] who stated that the applicant had lived with her from 1997 to 1999; and
- (6) An affidavit dated June 9, 2004, from her landlord, Mr. [REDACTED] who stated that the applicant and her husband had rented a room from him from January 10, 2000 to January 31, 2001.

On August 14, 2003, the director denied the application because he determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, the applicant states that she has timely submitted the requested evidence with the exception of her criminal record. The applicant also submits a Criminal History Record Information Request dated July 9, 2004, from the Central Records Unit of the Arlington County Police Department, stamped "No Criminal Arrest Record" for the name of [REDACTED] born on August 25, 1970.

A review of the record of proceedings reflects that the applicant has failed to provide any evidence revealing the final court disposition of her arrest detailed above. It is also noted that the name used by Central Records Unit as reflected on the Criminal History Record Information Request, is [REDACTED], born on August 25, 1970. However, according to the Federal Bureau of Investigations report the applicant's arrest record is under her alias and a different birth date. The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application. 8 C.F.R. § 244.9(a).

Notwithstanding the information regarding her arrests, the record of proceedings lacks any other corroborative evidence to support the applicant's continuous residence since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. A review of the record of proceedings reflects that the director erred in her conclusion that the applicant had "provided proof of physical presence in the United States and that you had resided in the United States as of February 13, 2001." The statements from Mr. [REDACTED] and her husband, Mr. [REDACTED] detailed in Nos. 1 and 2 above, indicate that that applicant had lived at [REDACTED] in Arlington, Virginia since October 9, 2000, to the date of their affidavits signed on August 25, 2001. However, Mr. [REDACTED] stated in his affidavit, detailed in No. 6 above, that the applicant resided at [REDACTED] in Arlington, Virginia, from January 10, 2000 to January 31, 2001. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and 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 (BIA 1988). It must be concluded that the applicant has failed to establish her continuous residence in the United

States as of February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. Therefore, the application will also be denied for these reasons.

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.