



U.S. Citizenship
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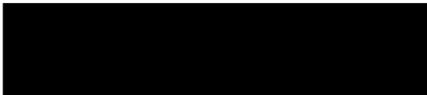
OFFICE: VERMONT SERVICE CENTER

DATE:

DEC 04 2007

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.

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 (AAO) on appeal. The appeal will be sustained.

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 respond to a request for evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods. The applicant also failed to provide the final court dispositions of the charges relating to her criminal record. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, the applicant submits additional evidence in support of her application for TPS.

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.

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. Subsequent extensions of the TPS designation have been granted with the latest extension until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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.

The Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested for the following offenses:

- (1) On February 19, 2000, the applicant was arrested for "Theft: Less \$300 Value 27 342" by the Montgomery County Police Department of Rockville, Maryland (Agency Case – [REDACTED]); and,
- (2) On April 25, 2000, the applicant was arrested for "FTA-Theft" by the Montgomery County Police Department (Agency Case – [REDACTED])

On April 2, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. In addition, if convicted, the applicant was 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 establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of the filing of her application. On April 27, 2003, the applicant requested an extension of two weeks in order to provide the requested evidence.

On July 31, 2003, the director again requested the applicant to submit the final court disposition for each of the charges detailed above. The applicant again was also requested to submit evidence establishing her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States from March 9, 2001. The applicant did not respond to the director's July 31, 2003 request. The director, therefore, denied the application on October 10, 2003, because the director determined that 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 enough evidence to establish that she was in the United States since February 13, 2001, and that she apologizes for not responding to the director's request. In addition, the applicant provides the following documentation along with her appeal: copies of the trial documents from the District Court of Maryland for Montgomery County regarding her arrest for "Theft: Less \$300 Value" (Tracking No. [REDACTED]); copies of several earnings statements from McDonald's of Lakeforest Mall in Gaithersburg, Maryland, dated from December 31, 2000 to December 15, 2001; copies of child support payments from the Child Support Enforcement Administration of Baltimore, Maryland, reflecting check dates of February 20, 2001, April 1, 2001, and July 13, 2000; a copy of a lease agreement dated September 24, 2003; a copy of the birth certificate of her third daughter born on September 5, 1994, in Gaithersburg, Maryland; a copy of the birth certificate of her second daughter born on March 25, 1992, in Los Angeles, California; a copy of her daughter's grade report dated April 4, 2003, from the Montgomery County Public Schools, Maryland; a copy of her daughter's Maryland Immunization Certificate dated September 14, 1998; and, a copy of the birth certificate of her first daughter born on April 10, 1992, in Los Angeles, California.

The first issue in the proceedings concerns the charges relating to the applicant's criminal record. A review of the documents from the District Court of Maryland for Montgomery County regarding her arrest for "Theft: Less \$300 Value" (Tracking No. [REDACTED]) reflects that the charges were "null processed" on June 2, 2000. Therefore, the applicant cannot be considered as having been convicted of two or more misdemeanors or one felony, and the director's decision on this ground will be withdrawn.

The evidence submitted, as detailed above, reflects that the applicant has continuously resided in the United States since February 13, 2001, and has maintained continuous physical presence in the United States since March 9, 2001. Therefore, the director's decision will be withdrawn and the application will be approved.

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 met this burden.



ORDER: The appeal is sustained and the application is approved.