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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JUL 30 2007  
[EAC 01 177 53981]

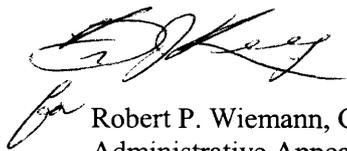
IN RE: Applicant: [REDACTED]

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.

  
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 denied the application because the applicant had failed to respond to a request to submit: (1) the final court dispositions of all of his arrests, including his arrest listed on the Federal Bureau of Investigation (FBI) fingerprint results report; and (2) evidence to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application.

On appeal, counsel 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 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 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. 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.

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.

The FBI report indicates that on March 12, 1993, the applicant was arrested in Mineola, New York, for “Attempted Robbery 1<sup>st</sup>,” a felony. On appeal, counsel submits a certificate of disposition from the County Court of the State of New York, County of Nassau, indicating that on July 27, 1993, the applicant was convicted of the reduced charge of “Assault 3<sup>rd</sup> Degree,” a class A misdemeanor. He was sentenced to a term of 3 years probation and ordered to pay \$90 in fines and costs.

The applicant was convicted of only one misdemeanor offense; therefore, he is not ineligible for TPS under section 244(c)(2)(B)(i) of the Act, or inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The next issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence since March 9, 2001.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid 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 record reveals that the applicant filed his initial TPS application on April 11, 2001. The director originally denied the application based on abandonment on May 8, 2003, because the applicant had failed to respond to a request dated April 24, 2002, to submit: (1) the final court dispositions of all of his arrests, including his arrest listed on the FBI report; and (2) evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. On May 27, 2003, the applicant filed a motion to reopen. The director subsequently reopened the case, and on April 6, 2004, the director issued a Notice of Intent to Deny (NOID) requesting that the applicant submit evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The director determined that the applicant had not responded to the NOID and denied the application on July 16, 2004. The applicant appealed the director's decision to the AAO on August 12, 2004. The AAO reviewed the record and determined that the director failed to explain in his decision the specific reasons for denial as required by 8 C.F.R. § 103.3. The AAO noted that the applicant did send a response to the director's April 6, 2004 NOID, and was date stamped as received by the Vermont Service Center on April 26, 2004. The AAO also noted that the director's initial request for additional evidence (dated April 24, 2002) advised the applicant to submit the final court dispositions relating to the applicant's criminal charge; however, the director's NOID dated April 6, 2004, failed to apprise the applicant of the need to submit certified final court dispositions of all of his arrests. The AAO, therefore, remanded the case to the director on November 21, 2005.

In accordance with AAO's remand of the case, on February 27, 2006, the director issued a NOID requesting that the applicant submit the final court dispositions of all of his arrests, including his arrest listed on the FBI report for "attempted robbery 1<sup>st</sup>," and additional evidence to establish continuous residence and continuous physical presence in the United States during the qualifying periods. The director listed and addressed on the NOID the evidence furnished by the applicant in an attempt to establish residence and physical presence, and noted discrepancies and conflicting information relating to the affidavits and letters furnished. The director also noted that although the applicant indicated on his initial TPS application that he had no Social Security number, the Forms W-2 indicate Social Security number "[redacted]" [under the name of [redacted]] as early as 1996, and that in the year 2001, the applicant began using Social Security number [redacted] on subsequent Forms W-2 and tax returns (IRS Forms 1040). The applicant was also requested to submit the originals of all documentary evidence previously submitted to CIS, and to submit a sworn statement explaining the discrepancies in his evidence containing two different Social Security numbers, and any corroborating documentary evidence available should accompany the statement. The applicant failed to respond to the NOID; therefore, the director denied the application on May 15, 2006.

On appeal, counsel submits additional evidence, including evidence previously furnished and contained in the record, and asserts that the "applicant has maintained physical presence and continuous residence in the USA since 1994 absent any evidence to the contrary."

As noted in the director's NOID, however, the affidavits furnished by the applicant (from [REDACTED] and [REDACTED] contain discrepancies and conflicting information. The NOID also indicated that although the applicant submitted Forms W-2 as evidence of his employment [with American Puff Corporation] the employment letter did not address the issue that the employer issued Forms W-2 using two different Social Security numbers.

Counsel refutes the director's findings of [REDACTED]'s affidavit, and also of [REDACTED]'s affidavit, and states that the affiants have met a high standard of credibility. He maintains that the applicant's Forms W-2 are the strongest evidence of his presence in the United States since February 2001, "as is the letter of employment from the employer which clearly states that the applicant was in the employ of the employer since March 1994. Employer's statements are prima facie credible since an employer has no reason to materially misrepresent any employee's employment history."

As required by 8 C.F.R. § 244.9(a)(2)(i), letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

- (A) Alien's address(es) at the time of employment;
- (B) Exact periods of employment;
- (C) Periods(s) of layoff; and
- (D) Duties with the company.

The director noted that the employment letter did not conform to the information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i), and that the letter did not address the issue that the employer issued Forms W-2 using two different Social Security numbers [under two different names [REDACTED], SSN [REDACTED] and [REDACTED]. It is also noted that the employment letter was not dated. Although the director advised the applicant to "submit a sworn statement explaining the discrepancies in his evidence containing two different SSN's," a sworn statement was not provided. The applicant, in this case, has failed to establish that he and [REDACTED] are one and the same person who was employed by American Puff Corporation since 1994. Nor did the applicant refute the director's finding that the affidavit from [REDACTED] was questionable and cannot be considered credible.

The applicant has failed to establish that he has met the criteria for continuous residence in the United States 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 will be affirmed.

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.