

identifying data deleted to
prevent clear and warranted
invasion of personal privacy

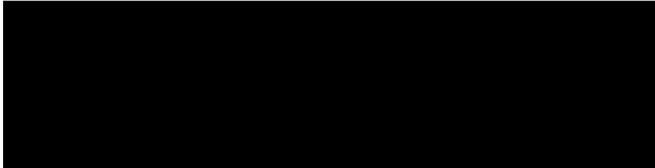
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MA

PUBLIC COPY

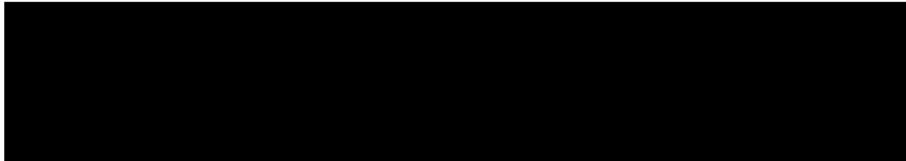


FILE: [REDACTED]
[EAC 01 227 59088]

OFFICE: Vermont Service Center

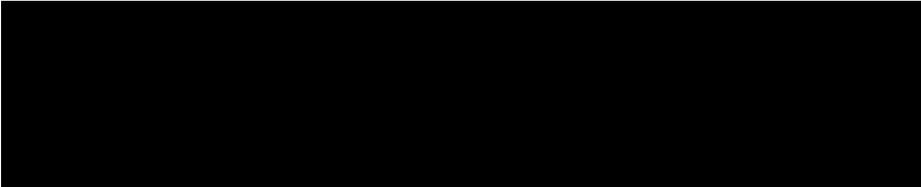
DATE: JUN 14 2007

IN RE: Applicant:



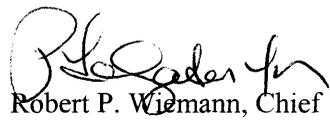
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 (VSC). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 application was denied by the director on the grounds that the applicant failed to establish that she had continuously resided in the United States since February 13, 2001, and failed to provide the final court disposition of an arrest for criminal mischief.

On appeal, counsel submits some additional documentation regarding the court disposition of the applicant's arrest and her time of residence in the United States.

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.

- (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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. 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.

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 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). See 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. See 8 C.F.R. § 244.9(b).

The record shows that the applicant filed her Form I-821, Application for Temporary Protected Status, during the initial registration period for El Salvadoran nationals on July 12, 2001. On May 15, 2003, the director issued a notice of intent to deny (NOID) in which the applicant was requested to submit evidence that she was a citizen or national of El Salvador, that she had an established residence in the United States as of February 13, 2001, and that she was physically present in the United States from March 9, 2001, until the date of filing (July 12, 2001). The director also advised that a criminal history check conducted by the Federal Bureau of Investigation (FBI) based on the applicant's fingerprints revealed that she was arrested on December 3, 2001, by the Suffolk County Police Department in Yaphank, New York, on a charge of criminal mischief 3 under section 145.05 of the Penal Laws of New York. The applicant was requested to submit the final disposition of the charge and, in the case of a conviction, whether it was a felony or a misdemeanor.

In response to the NOID the applicant, who claims to have entered the United States in 1992, submitted a photocopy of her El Salvadoran birth certificate issued by the Consulate General in Washington, D.C. on October 13, 1999; a family court form dated November 29, 2001; a letter from an adult center in Central Islip, New York, dated June 16, 2003, stating that the applicant was a student from September 10, 2001, to January 1, 2002; and a series of money order receipts – dated November 23, 1999, and from March 7, 2001 to May 5, 2003 – payable to the applicant at various addresses in the United States.

On July 23, 2003, the director denied the application on the grounds that the applicant failed to establish that she had resided in the United States continuously since February 13, 2001, and did not provide any disposition of her arrest.

On appeal counsel submits the following additional documentation: a "Transcript of Record" from the District Court of the County of Suffolk, in Central Islip, New York, dated July 28, 2003; a letter from the Medical Records section of the Brentwood (New York) Family Health Center, dated July 31, 2003, listing thirteen dates between January 2, 2001, and October 5, 2001, when the applicant was seen; and an amended birth certificate dated May 19, 2003, replacing an incorrect certificate issued on September 18, 2000, for the applicant's daughter who was born in Alexandria, Virginia, in June 1996. Based on the entire record, the AAO determines that the applicant has established her continuous residence in the United States since February 13, 2001, and has therefore overcome that ground for the denial of her TPS application. As for the transcript from the district court in Suffolk County, New York, it contains the following information with respect to the applicant's criminal charge:

ARRAIGNMENT OFFENSES:	145.05	CRIMINAL MISCHIEF
DATE OF PLEA:	11/7/02 (handwritten)	
DATE OF DISPOSITION:	11/07/2002	
DISPOSITIONS:	145.05	REDUCED TO 145.00
	145.00	ACD 170.55
Dism + Sealed (handwritten with initials)		

Under New York State law, section 145.05 of the Penal Law – “Criminal mischief in the third degree” – is classified as a class E felony. Section 145.00 of the Penal Law – “Criminal mischief in the fourth degree” – is classified as a class A misdemeanor. Section 170.55 of the Penal Law – “Unlawfully using slugs [in a coin machine] in the second degree” – is a class B misdemeanor. The transcript of record is not clear on its face – as neither the acronym “ACD” before the code section 170.55 nor the cryptic notation “Dism + Sealed” are explained – though it appears to indicate that the applicant was convicted of two misdemeanor offenses: sections 145.00 and 170.55 of the New York Penal Law. Based on the documentation of record, the AAO concludes that the applicant has failed to establish her eligibility for TPS in accordance with section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). The director’s decision denying the application on that ground will therefore 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 that burden.

ORDER: The appeal is dismissed.