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U.S. Citizenship
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Services



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FILE: [REDACTED]
[WAC 02 178 52860]

OFFICE: California Service Center

DATE: MAR 05 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The applicant's previously granted Temporary Protected Status was withdrawn by the Director, California Service Center. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be 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 director withdrew the applicant's previously granted TPS on the ground that he failed to provide sufficient evidence that he had not been convicted of a felony or two or more misdemeanor offenses, as required to establish his eligibility for TPS under section 244(c)(B) of the Act.

On appeal, the applicant reiterates his contention that he has not been convicted of a felony or two or more misdemeanors, and submits documentation which he asserts establishes that most of his arrests have not resulted in criminal convictions.

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. 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 TPS 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” as follows:

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 the 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 his initial Form I-821, Application for Temporary Protected Status, on May 6, 2002. It was approved on June 2, 2003.

On June 8, 2005, after the applicant had filed a re-registration application [WAC 05 196 74514], the service center issued a Request for Evidence (RFE) advising the applicant to submit a certified copy of the final court disposition of four arrests in Oakland, California, between 1995 and 2003. The applicant responded to the service center on August 3, 2005, by submitting a “Verification of Record” stamped by the Superior Court of California, County of Alameda, confirming that the applicant had been convicted of a misdemeanor on January 2, 1996, stemming from an arrest on December 19, 1995, and that he had been sentenced to 36 months of probation. The applicant furnished no final court disposition of the other three arrests listed in the RFE – on September 25, 1999,

October 6, 1999, and January 19, 2003.¹ On May 1, 2006, an updated report on the applicant's arrest record from the Federal Bureau of Investigation (FBI) listed an additional arrest in San Bruno, California, for petty theft on March 20, 2006.

On August 3, 2006, the director issued a decision withdrawing the applicant's TPS. The director cited four arrests of the applicant in Oakland, California – (1) December 19, 2005, on charges of violating a restraining order and battery; (2) September 25, 1999, on a charge of violating a restraining order, domestic violence; (3) October 6, 1999, on a charge of violating a restraining order, domestic violence; and (4) January 19, 2003, violating a restraining order, domestic violence – and stated that the applicant had failed to address the last three arrests in his response to the RFE. The director determined that the applicant failed to furnish sufficient evidence that he had not been convicted of a felony or two or more misdemeanor offenses, and that he therefore had not established his eligibility for TPS under section 244(c)(2)(B) of the Act.

The applicant filed a timely appeal, asserting that he complied with the RFE of June 8, 2005, by submitting the requested documentation within the 90-day time period which showed that he had only been convicted of a single misdemeanor and was therefore not ineligible for TPS. The applicant submits new documentation concerning his arrests from the Alameda County Sheriff's Office, the Superior Court of California in Alameda County, and the Superior Court of California in Santa Clara County. All of the documents are dated in August 2006, which does not comport with the applicant's claim to have submitted them during the 90-day window provided in the RFE of June 8, 2005.

The document from the Alameda County Sheriff's Office, which confirms the applicant's conviction on a misdemeanor charge in January 1996, is not a final court disposition and therefore does not comply with the document request in the RFE. The document from the Superior Court of California in Santa Clara County, which states that the applicant has no criminal record, is irrelevant in this TPS proceeding because none of the applicant's arrests, as far as the record shows, occurred in Santa Clara County. The other two documents, each of which purports to be a "Verification of Record" from the Superior Court of California in Alameda County (in which the city of Oakland is located), contain internal inconsistencies which call their veracity into question. One of the documents, relating to an arrest of [REDACTED] on September 26, 1999, states that it is a "San Jose County case" for which "no disposition is available." The AAO notes that San Jose is not a county, but rather a city in neighboring Santa Clara County. Moreover, it is unclear whether the arrest at issue, on a charge identified as "M 40508(B) VC," is the same as that cited earlier as occurring in Oakland on September 25, 1999 involving the violation of a restraining order to prevent domestic violence. In any event, the document is not a final court disposition of the cited arrest on September 26 (or 25), 1999. As for the other "Verification of Record" from the Superior Court of California in Alameda County, which also relates to [REDACTED], it is chronologically impossible and appears to conflate two of the applicant's arrests by citing the date of arrest as January 20, 2003, and then stating that the final disposition of the case was 36 months of probation effective January 2, 1996 (seven years earlier). This was the sentence the applicant received for the misdemeanor conviction after his first arrest on December 19, 1995. Thus, like the other Verification of Record previously discussed, the document is not a final court disposition of the cited arrest on January 20 (or 19), 2003.

¹ Based on the response to the RFE, the director denied the re-registration application on September 29, 2005, on the ground that the applicant had not submitted sufficient documentation to establish that he had not been convicted of a felony or two or more misdemeanors committed in the United States, as required under section 244(c)(2)(B) of the Act to be eligible for TPS. The applicant did not appeal the denial of the re-registration application.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No such competent evidence has been submitted by the applicant to reconcile the inconsistencies in the "Verifications of Record" from the Superior Court of California, County of Alameda, dated August 14, 2006. Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the his remaining evidence. *See id.*

Based on the foregoing analysis, the AAO concurs with the director's decision that the applicant has failed to provide adequate evidence to establish that he has not been convicted of a felony or two or more misdemeanors committed in the United States, as required under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a) to be eligible for TPS. Accordingly, the director's decision to withdraw approval of the applicant's TPS will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish her nationality and identity, in accordance with the provisions of 8 C.F.R. § 244.9(a)(1). The application must be denied for this reason as well.

The AAO notes that no final court disposition has been submitted for the applicant's additional arrest on March 20, 2006 for petty theft in San Bruno (San Mateo County), California. In any future proceedings before CIS the applicant must submit evidence of the final court disposition of this charge, and any other charges against him.

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.