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U.S. Citizenship
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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: MAR 05 2007
[EAC 01 234 53413]

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 "Robert P. 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 he found that the applicant had failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits additional evidence.

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.

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 record reveals that the applicant was arrested in Loudoun County, Virginia, on March 25, 2001, and charged: (1) with one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 182-266 of the Code of Virginia, a misdemeanor, and, (2) one count of unlawful purchase or possession of an alcoholic beverage in violation of section 4.1-305 of the Code of Virginia, also a misdemeanor.

The first issue in this proceeding is whether the applicant has submitted the final court disposition of his arrest on March 25, 2001.

Pursuant to a letter dated May 16, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The record does not contain a response from the applicant.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 9, 2003.

On appeal, the applicant submits a photocopy of a document from the Loudoun County Criminal Court, Loudoun County, Virginia, indicating that the applicant pled guilty to Count 1, driving under the influence of

alcohol, a misdemeanor, on September 14, 2001. The applicant did not provide a court document reflecting the final court disposition of Count 2.

The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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

The applicant indicated on his Form I-821, Application for Temporary Protected Status, that he entered the United States in September 1997. He submitted the following evidence:

1. a photocopy of his Virginia driver's license issued on October 1, 2002; and,
2. a letter from [REDACTED] of Mountain Sports Club in Leesburg, Virginia, stating that he has known the applicant "since before March 2001."

As stated above, the applicant was requested on May 16, 2003, to submit additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. The record does not contain a response from the applicant.

The director determined that the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant submits the following:

3. a photocopy of a money transfer receipt dated May 3, 1999;
4. a photocopy of a pay statement from New-Again Auto Appearance Center in Silver Spring, Maryland, dated July 19, 2000; and,
5. a photocopy of the final court disposition of his arrest on March 25, 2001, reflecting court appearances on April 11, 2001, May 8, 2001, June 8, 2001, and September 14, 2001.

The money transfer receipt (No. 3 above) and the pay statement (No. 4 above) predate the requisite periods to establish continuous residence and continuous physical presence. The applicant has not submitted sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States throughout the requisite periods. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS for this reason will also be affirmed.

It is noted that the applicant was apprehended by the United States Border Patrol near Hebronville, Texas, on November 30, 1997, after having entered the United States without inspection. The applicant was placed in removal proceedings, and on May 13, 1998, the an Immigration Judge in Baltimore, Maryland, granted the applicant the privilege of voluntary departure on or before September 10, 1998, with an alternate order of removal if the applicant failed to depart in compliance with the grant of voluntary departure. The applicant failed to depart the United States in compliance with the grant of voluntary departure. The record contains an outstanding warrant of removal issued by the District Director, Baltimore, Maryland, on October 8, 1998.

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.