



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: MAY 09 2007

[REDACTED] consolidated herein]

[EAC 02 105 50461]

[EAC 04 207 51441 – Appeal]

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 application was denied by the Director, Vermont Service Center. The applicant filed an untimely appeal that was treated by the service center director as a motion to reopen. The service center director granted the motion and denied the application for cause. The applicant filed a timely appeal to the latest denial of his application. 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 determined that the applicant had failed to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

On appeal, the applicant submits a statement.

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 the following offenses:

1. On December 15, 1985, the applicant was arrested by the Police Department, Plano, Texas, () and charged with “Charge 1-Driving While Intoxicated;”
2. On May 9, 1986, in a court action, a disposition listed on the Federal Bureau of Investigation (FBI) fingerprint results report as “Charge-Driving While Intoxicated, Sentence-PGBC 800 C 60 2;”
3. On May 5, 1986, the applicant, under the name of (), was arrested by the Police Department, Plano, Texas, () and charged with “Charge 1-Driving While Intoxicated;”
4. On May 16, 1986, in a court action, a disposition listed on the FBI fingerprint results report as “Charge-Driving While Intoxicated, Sentence-30D Confinement PGBC 500/C.”

Pursuant to a letter dated August 22, 2002, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to submit evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In response, the applicant submitted photocopies of the following documentation: the biographic pages of his El Salvadoran passport issued on June 26, 1989, by the Consulate General, Washington, D.C.; and, earnings statements from Mr. (), Washington, D.C., indicating a hire date as of March 19, 2001, for work performed in 2002.

The applicant also submitted a report from the Superior Court of the District of Columbia, Criminal Information System, "Count Details," processed on September 5, 2002, indicating an offense date of March 28, 1990, Case No. T 02392 90, Charge "T304 DWI (1st) INTOX PER SE 40-71," with disposition of *Nolle Prosequi* on May 7, 1991; and, another report from the Superior Court of the District of Columbia, Criminal Information System, "Count Details," processed on September 5, 2002, indicating an offense date of March 21, 1992, Case No. [REDACTED] Charge "T304 DWI (1st) INTOX PER SE 40-71," with a plea and judgment of guilt, disposition on October 27, 1992, with a fine and 90 days confinement.

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 7, 2003.

On the initial appeal, filed late, and accepted by the service center director as a motion, the applicant stated that he had only two arrests in his lifetime. He stated that he did submit the requested documentation, and that "the court gave copies, but they stated the wrong date." In support of the appeal, the applicant submitted: a final disposition, The District of Columbia Versus [REDACTED] Criminal Division Traffic, indicating "Traffic Diversion Completed," *Nolle Prosequi*, May 7, 1991; a Superior Court of the District of Columbia, Amended Judgment and Commitment/Probation Order, Case No. [REDACTED] dated November 5, 1992, discussing the fine, probation, and terms of confinement for "treatment and supervision provided by the D.C. Department of Corrections;" and, additional earnings statements.

The director denied the application on June 24, 2004, after finding that the applicant had again failed to submit the required dispositions of his criminal cases in Texas, and that the applicant had failed to submit sufficient evidence of his continuous residence and continuous physical presence in the United States during the relevant timeframes.

In the instant appeal, the applicant states that he did not recall the arrests that he had in Texas. He states that he needs additional time to submit the required documentation from Texas. He does not submit any additional evidence with the appeal. To date, additional evidence has not been submitted and the record will be considered complete.

The applicant has failed to provide any evidence revealing the final court disposition of his arrests in Texas detailed above at Numbers 1-4. In addition, the applicant presented evidence indicating that he had two additional arrests in Washington, D.C. 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). It appears that the applicant may be ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

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

In addition to the documentation identified above, the applicant had submitted a receipt dated March 29, 1991, for a car payment, and a generic rent receipt dated January 10, 1994.

The passport issued in Washington, D.C., the receipts, and the Superior Court of the District of Columbia documentation are all dated between 1989 and 1994, and do not establish either the applicant's continuous

physical presence or continuous residence in the United States during the requisite periods. The applicant submitted earnings statements from Mr. Henry's Inc., that indicate a hire date of March 19, 2001, and that are for work performed for various weeks in 2001, 2002, and 2003. The pay stubs, however, reflect the use of different social security numbers on various statements. The applicant has not provided an explanation for the use of different social security, and therefore, the earning statements are insufficient to establish his continuous residence and continuous physical presence in the United States during the requisite periods. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). He has, therefore, 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 temporary protected status will be affirmed.

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.