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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

MAY 29 2007

[WAC 01 172 50785]

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, California Service Center. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant claims to be a national 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 on the grounds that the applicant failed to establish that he had continuously resided in the United States since February 13, 2001 and been physically present in the country since March 9, 2001, and failed to submit requisite court documentation relating to an arrest.

On appeal the applicant submits additional documentation pertinent to his residence, physical presence, and criminal record 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.

The phrase 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.

The phrase 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.

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.

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 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 his initial Form I-821, Application for Temporary Protected Status, on March 30, 2001, during the initial registration period for El Salvadoran nationals. On August 7, 2003, the applicant was sent a Notice of Intent to Deny (NOID) in which he was requested to submit evidence within 30 days of his continuous residence and physical presence in the United States from the dates applicable for TPS applicants from El Salvador, as well as the certified final court disposition(s) of any arrests in the United States. The latter request was based on the results of a Federal Bureau of Investigation (FBI) Identification Record fingerprint report indicating that the applicant was arrested on July 21, 1992, by the Los Angeles, California, Police Department and charged with shoplifting.

After the applicant failed to respond to the NOID, the director denied the application in a Notice of Decision on March 19, 2004, on the grounds that the applicant 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, and failed to provide the final court disposition(s) of his arrest(s).

On appeal the applicant submits photocopies of the following additional documentation pertinent to his residence and physical presence in the United States:

1. The applicant's 2001 and 2002 Form W-2, Wage and Tax Statements; his 2001 and 2002 Internal Revenue Service (IRS) Form 1040, U.S. Income Tax Returns; and his state tax returns for 2001 (California) and 2002 (Nebraska).
2. Two Employment Authorization Cards issued to the applicant in 2002.
3. A 2002 California Department of Motor Vehicles (DMV) Identification Card.
4. A letter for Lifestyles Design Group in Arleta, California, stating that it employed the applicant from April 2000 to October 2000.
5. An earnings statement from Lifestyles Design Group for the pay period April 5, 2001 to April 18, 2001.
6. Earnings statements from 1999, 2000, and 2001, addressed to the applicant, from Pedus Building Services, Inc. in Pacoima, California; and from Federal Cleaning Contractors, Inc. in Northbrook, Illinois.
7. Birth certificates from the State of Nebraska and from Pacifica Hospital in Sun Valley, California, for the applicant's son and daughter, born September 29, 2001, and July 10, 2003, respectively.
8. A money transfer receipt from the applicant in Los Angeles, California, to a recipient in El Salvador, dated October 7, 2000.

The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. *See* 8 C.F.R. § 244.9(b). The evidence submitted by the applicant contains numerous inconsistencies. For

example, the documentation identifies four different social security numbers for the applicant, including different numbers in his 2001 and 2002 income tax returns. An illogical series of addresses in Pacoima, California, are identified in documentation from the years 1999-2001, showing the applicant as living for three inconsecutive time periods at [REDACTED] interspersed with two short stays at [REDACTED]. 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 resolve the foregoing inconsistencies. Moreover, doubt cast on any aspect of the applicant's evidence reflects on the reliability of the petitioner's remaining evidence. *See id.*

The AAO concludes that the evidence of record does not meet the documentary standards set forth in 8 C.F.R. § 244.9(a)(2) and fails to establish that the applicant was continuously physically present in the United States from March 9, 2001, and continuously resident in the United States from February 13, 2001, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the director's denial of the application will be affirmed on those grounds.

On appeal the applicant also provides a report of the Council Bluffs (Iowa) Police Department and a printout from the Pottawattamie County Court in Council Bluffs, Iowa, indicating that he was arrested on February 8, 2004, on the misdemeanor charge of public intoxication/drunkenness, pleaded guilty, and was fined \$17.00. The applicant has not furnished the previously requested final court disposition of his arrest in Los Angeles for shoplifting on July 21, 1992. Thus, the applicant has not provided the evidence necessary for the adjudication of his application, as required under 8 C.F.R. § 244.9(a), and has failed 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 denial of the application will also be affirmed on this ground.

Beyond the decision of the director, the AAO notes that the record contains an executed Warrant of Deportation indicating that the applicant was deported from the United States at Los Angeles Airport on January 19, 1994, and again on June 11, 1998, at Houston, Texas. The date of the second deportation conflicts with the applicant's assertion on his initial TPS application that he last entered the United States on March 20, 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 TPS 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.