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**U.S. Citizenship
and Immigration
Services**

ML

[REDACTED]

FILE: [REDACTED]
[EAC 05 134 71519]

Office: VERMONT SERVICE CENTER

Date: NOV 05 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act (the 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 Director, Vermont Service Center (VSC), denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who seeks 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 the applicant failed to establish he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. Finally, the director found that the applicant did not submit court certified judgment and conviction documents of the final dispositions for three arrests.

On appeal, counsel for the applicant asserts that the applicant is prima facie eligible for TPS and submits documents not previously available to the applicant.

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 Salvadorans must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted by the Secretary of Homeland Security, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

To qualify for late registration, the applicant must provide evidence that during the initial registration period he or she fell within at least one of the four provisions described in 8 C.F.R. § 244.2(f)(2) above.

The burden of proof is on 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). 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. 8 C.F.R. § 244.9(b).

The record reflects that the applicant filed a TPS application on February 11, 2005 – more than three years after the close of the initial registration period for Salvadorans. In support of his application, the applicant submitted a copy of the identification page of his Salvadoran passport, and various documents relating to his physical presence in the United States.

On June 7, 2006, the director requested that the applicant submit evidence establishing his eligibility under the late initial registration provisions and establishing his qualifying continuous residence and continuous physical presence. The director also requested that the applicant submit the final court dispositions for three arrests that showed up when the applicant was fingerprinted in conjunction with his TPS application. The applicant did not respond to the director's request. On February 26, 2007, the director denied the application, finding that the applicant failed to establish his eligibility for late registration, had failed to establish his qualifying continuous residence and continuous physical presence, and had failed to provide the requested court certified final dispositions for three arrests.

On appeal, counsel for the applicant asserts that the applicant is submitting documents that were not previously available and submits records from the Suffolk County Police Department.

The applicant has submitted documentation that establishes that he received medical attention in New York from about April 5, 2000, through about October 14, 2004. He filed the current application on January 5, 2005, and appeared for fingerprinting on March 28, 2006. The applicant has submitted sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. 244.2(b) and (c). Consequently, the director's decision to deny the application on this ground will be withdrawn.

The application cannot be approved, however, because while the applicant has submitted evidence in an attempt to establish his qualifying continuous residence and continuous physical presence, none of the documentation submitted overcomes his failure to file his TPS application within the initial registration period. CIS records indicate that the applicant had an asylum application pending with the New York Asylum Office until September 1, 2004. This pending asylum application provided the applicant with a basis for late registration under 8 C.F.R. § 244.2(f)(2)(ii). However, on September 1, 2004, the Asylum Office administratively closed the applicant's asylum application when he failed to appear for a scheduled interview. The applicant had 60 days to apply for TPS under the late initial filing provisions at 8 C.F.R. § 244.2(g), but failed to do so. The applicant has not submitted any evidence to establish that he has met any other criteria for late registration described in the regulations at 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application on this basis will be affirmed.

Furthermore, the record reflects the following criminal arrests in New York:

1. in Yaphank, on January 4, 1992 for criminal possession of stolen property. According to police records, it appears that the applicant subsequently pleaded guilty to unauthorized use of a vehicle without the owner's consent, a misdemeanor; and,
2. in Yaphank, on July 22, 1999, for criminal trespassing. According to police records, it appears that the applicant subsequently pleaded guilty to disorderly conduct, a misdemeanor.

On June 7, 2006, the director requested that the applicant submit final court dispositions for these arrests. The applicant did not respond to the director's request. On appeal, counsel for the applicant submits records from the Suffolk County Police Department, but has failed to provide the actual court dispositions for these charges. Accordingly, the applicant is also ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

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 cited 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.