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U.S. Citizenship  
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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

[REDACTED] consolidated]

[EAC 02 191 51686]

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.

*John H. Vaughan*  
for

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center (VSC), and 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 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 the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to provide documentation concerning the final court dispositions of his arrests.

On appeal, counsel for the applicant submits a brief statement.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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.

- (g) Has filed an application for late registration with the appropriate Service director, within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 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.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now CIS, on May 14, 2002. At the time of filing his application, the applicant indicated that he had never been arrested. In support of the application, the applicant provided photocopies of: his El Salvadoran birth certificate, with English translation; a passenger airline receipt, showing the applicant's travel on April 24, 2002, from Los Angeles, California, to Long Island, New York; and, hand-written, generic rent receipts, dated February 2000 to April 2002.

As a result of being fingerprinted in connection with his application, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested: on February 4, 1999, by the Rotterdam Town Police Department, Schenectady, New York, and charged with Assault – 2<sup>nd</sup>; and, on August 29, 2002, by the New York State Police in Albany, New York, for violations of the New York Vehicle Traffic Law (NY VTL) sections 1192.2 and 3.

On July 15, 2003, the director requested the applicant to submit evidence of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. The applicant was also requested to submit the final court dispositions for the above arrests, and any other charges against him. On August 6, 2003, the applicant provided photocopies of additional generic, hand-written receipts and incident reports concerning his arrests. He also submitted a letter, dated August 5, 2003, from Damon Bucharadt, indicating that he had paid the applicant in January 2001 for work done at his house.

The director determined that the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to provide documentation concerning the final court dispositions of his arrests. Therefore, the director denied the application on August 22, 2003.

On appeal, the applicant states that he sent all the evidence he had on August 13 [actually August 6], 2003.

The applicant claims to have continuously lived in the United States since January 8, 2000. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. The employment letter form [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, it is not supported by

corroborative evidence (such as tax forms, pay stubs and/or employment records) and is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, the period(s) of layoff (if any), and the applicant's specific duties. The generic, handwritten receipts provided are also not supported by any corroborative evidence (such as utility bills addressed to the applicant).

Based on a review of the record, it is concluded that the applicant has failed to submit 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). The applicant has not established his continuous physical presence in the United States from March 9, 2001, to the date he applied for TPS in May 2002, nor his continuous residence in the United States since February 13, 2001. Consequently, the director's decision to deny the application on these grounds will be affirmed.

Finally, the applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application, specifically, the final court dispositions of all of the charges against him. 8 C.F.R. § 244.9(a). Consequently, the director's decision to deny the application for Temporary Protected Status on this ground will also be affirmed.

It is noted that CIS records reflect the applicant was removed from the United States on June 22, 1999, under an order of deportation issued by an Immigration Judge, dated March 18, 1996.

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.