

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

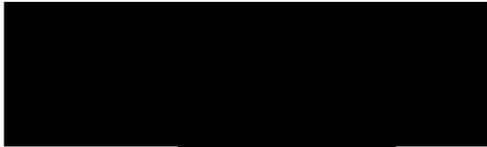
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



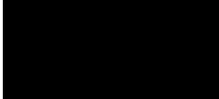
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

M1



FILE:



OFFICE: Vermont Service Center

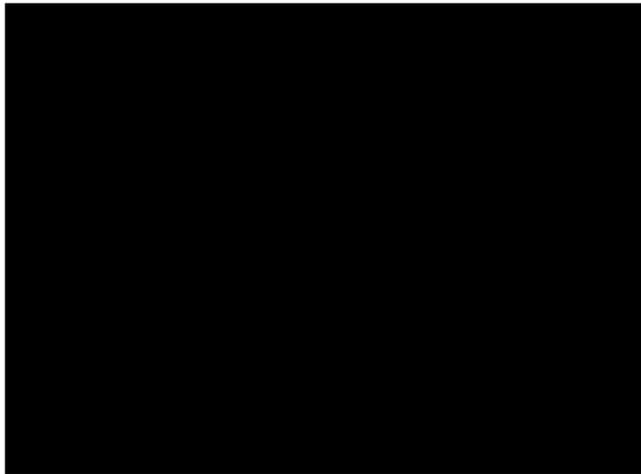
DATE: SEP 20 2007

[consolidated herein]

[EAC 02 048 51942]

IN RE:

Applicant:



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, reopened, denied, reopened and denied again by the Director, Vermont Service Center. The application 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 he determined that the applicant was ineligible for TPS because the applicant had failed to provide the requested final court dispositions regarding his past arrests. The director also denied the applicant because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts his eligibility for TPS and submits a statement in support of his claim.

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 Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested and charged by the Sheriff's Office, Bakersfield, California, for the following:

- (1) On January 4, 1997, the applicant was charged with "Adw Other Than F/Arm or GBI Force," "Willful Crlty Chld Likely to Prdc GBI/DTH," and "Inf Corp Inj on Spouse/Cohab;"
- (2) On June 2, 1997, the applicant was charged with "Threaten W/Intent to Terrorize," "Assault on Person," and "Batt On;"
- (3) On November 1, 1997, the applicant was charged with "Adw Other Than F/Arm," "GBI Force," and "Corp Inj on Spouse/Cohab;" and,
- (4) On July 13, 1999, the applicant was charged with "001 Counts of Robbery, Second Degree," and "001 Counts of Conspiracy, Commit Crime."

Pursuant to a notice of intent to deny the application for TPS dated April 3, 2003, the applicant was requested to submit the final court dispositions for the charges as detailed above. The applicant was also requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application.

In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The applicant did not submit the requested final court dispositions of his past arrests. On July 16, 2003, the director denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States. The director also denied the application because the applicant failed to provide the requested final court dispositions for his past arrests.

On October 24, 2003, the applicant attempted to file an appeal which was rejected by the VSC.

On January 7, 2004, the applicant filed a motion to reopen. The director granted the motion and determined that the applicant was ineligible for TPS because the applicant was convicted of two or more misdemeanor offenses committed in the United States. 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. Therefore, the director denied the application again on April 14, 2004.

On May 12, 2004, the applicant filed a subsequent motion to reopen. The director granted the motion and determined that the applicant was ineligible for TPS because the applicant was convicted of one felony and at least two misdemeanor offenses committed in the United States. On October 27, 2004, the director reaffirmed her decision to deny the application dated April 14, 2004.

On November 24, 2004, the applicant filed an appeal which is now before the AAO. On appeal, the applicant states that he is now a person of good moral character and that he was influenced by friends in the past regarding his past arrests. In addition, the applicant provides two letters of recommendation as well as a church letter from Father [REDACTED].

A review of the record of proceedings reflects that the applicant provided the final court dispositions from the Superior Court of the County of Kern, California. Regarding his arrest on January 4, 1997, as detailed in No. 1 above, the applicant plead guilty and was convicted of two misdemeanors, specifically: PC 273.5(a) and PC 245(a)(1) (Case No. [REDACTED]). The applicant was sentenced to 30 days in jail.

Regarding his arrest on June 2, 1997, as detailed in No. 2, the record reflects that the applicant was found guilty of two misdemeanor offenses, specifically, PC 422 and PC 245 (a)(1) (Case No. [REDACTED]). The applicant was sentenced to serve 90 days in jail for these offenses.

In addition, the record reflects that the applicant plead not guilty to the charge under PC 212.5(C) and nolo contendere to the charge of PC 243 (A) pertaining to his arrest on July 13, 1999 (Case No. [REDACTED]) as detailed in No. 3. The applicant was found guilty of PC 243 (A), a misdemeanor, and was sentenced to 180 days in jail.

Therefore, the applicant is not eligible for temporary protected status because he has been convicted of five misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for TPS on this ground will be affirmed.

It is also noted that the director erred in her conclusion that the evidence submitted by the applicant established his continuous residence and continuous physical presence in the United States during the requisite time periods. The record contains a letter dated May 1, 2004, from the applicant's landlord, Mr. [REDACTED], indicating that the applicant had resided at [REDACTED] in Alexandria, Virginia, from December 2000 to March 2002. Additionally, the record also contains a copy of the applicant's earnings statement from [REDACTED] for a pay period from August 6, 2000 to August 12, 2000, reflecting that the applicant resided at [REDACTED] Bakersfield, California; thus, questioning the credibility of the statements from [REDACTED] as well as the submitted evidence in support of his statements.

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). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in his claimed residence in the United States. Therefore, the reliability of the remaining evidence offered by the applicant is suspect and it must be concluded that the applicant has failed to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Thus, the director's conclusion that the applicant had established his continuous residence and continuous physical presence is withdrawn. Consequently, the application must also be denied on these grounds.

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.