

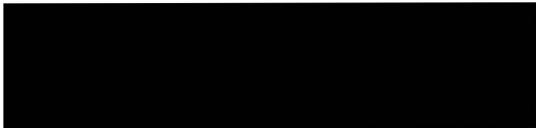


U.S. Citizenship
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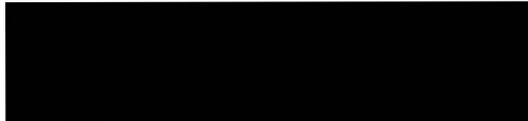


FILE: [REDACTED]
[EAC 06 328 78437]

OFFICE: Vermont Service Center

Date: *fES* 01 2008

INRE: Applicant:



APPLICANON: 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 application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be 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 the applicant; 1) had failed to establish that he was eligible for late registration; 2) had failed to establish a qualifying continuous residence; 3) failed to establish a qualifying continuous physical presence;" and 4) was not eligible for TPS due to multiple misdemeanor convictions in the United States.

On appeal, the applicant makes no 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

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). 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 first issue in this proceeding is whether the applicant is eligible for late registration.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The record reveals that the applicant filed his application with Citizenship and Immigration Services (CIS) on August 24, 2006. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On December 1, 2006, the applicant was requested to submit **evidence** establishing his eligibility for **late** registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The applicant has not articulated any basis of eligibility for late registration, nor does the record indicate that the applicant is eligible to file a **late** registration application. As such, the director's decision to deny the application on this basis will be affirmed.

The second issue in this matter is whether the applicant has established a qualifying residence and continuous presence during the required period.

On December 1, 2006, the applicant was requested to provide evidence establishing his qualifying residence and qualifying **continuous** residence. The record does not indicate that the applicant responded.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on March 30, 2007.

The record contains state identification cards from Virginia dated in 1999, and a pay stub from February 2001. The record also contains court records from the applicant's extensive criminal record. Given the **body** of court records and the state identification cards in the record the AAO accepts that the applicant has been residing in the United States and continuously physically present during the required periods. As such, the director's decision on this issue will be withdrawn.

The next issue in this matter is the applicant's ineligibility due to multiple misdemeanor convictions.

On appeal the applicant makes no statement, but submits additional court records.

The record reveals the following offenses:

- (1) On August 16, 2001, the applicant was convicted of Reckless Driving in the Circuit Court of Fairfax County. Class I Misdemeanor.
- (2) On August 16, 2001, the applicant was convicted of Driving Without a Valid Operator's License in the Circuit Court of Fairfax County. Class I Misdemeanor.
- (3) On June 3, 2002, the applicant was convicted of Driving While Intoxicated in the General District Court of Fairfax County, Virginia. Class I misdemeanor. Case No. GT020472 13-00.
- (4) On July 9, 2002, the applicant was arrested and subsequently convicted of Driving While Intoxicated in the General District Court of Fairfax County, Virginia. Class 1 misdemeanor.
- (5) On January 14, 2003, the applicant was arrested and subsequently convicted of Driving Under a Revoked/Suspended License, in the Fairfax County General District Court. Case No. [REDACTED].
- (6) On May 28, 2003, the applicant was charged with being a Fugitive from Justice by the Sheriff's Office, Fairfax County, Virginia.
- (7) On June 23, 2003, the applicant was charged with Prostitution by the Police Department, Fairfax County, Virginia.
- (8) On June 20, 2004, the applicant was charged with being a Fugitive from Justice by the Sheriff's Office, Fairfax County, Virginia. Warrant dismissed, December 13, 2006. Case No. [REDACTED].
- (9) On June 20, 2004, the applicant was arrested and subsequently convicted of Driving While Intoxicated in the Fairfax County General District Court. Case No. [REDACTED].
- (10) On September 23, 2005, the applicant was charged with Driving With Suspended License, 3rd offense in 10 years, by the Vienna Police Department. Case No. [REDACTED].
- (11) On November 14, 2005, the applicant was convicted of Operating a Motor Vehicle with a Suspended License, in the Fairfax County General District Court. [REDACTED] Class 1 misdemeanor.
- (12) On November 14, 2005, the applicant was convicted of Reckless Driving in the General District Court of Fairfax County, Virginia. Class I misdemeanor.
- (13) On October 6, 2005, the applicant was charged with being a Fugitive from Justice by the Sheriff's Office, Fairfax County, Virginia.
- (14) On October 7, 2005, the applicant was charged with Failure to Appear by the Leonardtown State Police, Maryland.
- (15) On December 9, 2005, the applicant was charged with Driving with a Suspended License by the Police Department, Leonardtown, Maryland.
- (16) On February 9, 2006 the applicant was convicted of Driving With a Suspended License in the District Court of Maryland, St. Mary's County.

On appeal, the applicant makes no statement, but submits additional court documentation.

The applicant is ineligible for TPS due to his multiple misdemeanor convictions detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.P.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason 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.