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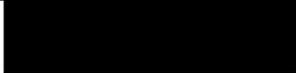
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: California Service Center

DATE: FEB 29 2008

[WAC 01 222 51076]

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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a 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 a qualifying residence and continuous physical presence or his national identity.

On appeal, the applicant states that he has made some mistakes but asks that CIS approve his application.

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 Salvadorans was from March 9, 2001 through September 9, 2002. 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).

Upon examination of the record the AAO notes that the application had been denied for abandonment, and re-opened sua sponte by CIS. In addition, although not addressed by the director in the denial decision, the applicant has a long criminal record and is ineligible as a matter of law. One basis of the director's decision includes failure to establish national identity. The record contains numerous identity documents from El Salvador and a copy of the applicant's translated birth certificate. This portion of the director's decision will be withdrawn.

The first issue in this matter is the applicant's failure to establish a qualifying residence and continuous physical presence.

On April 3, 2007, the applicant was requested to submit evidence establishing his continuous residence since February 13, 2001, and continuous physical presence since March 9, 2001, in the United States as well as his date of entry into the United States. The applicant, in response, submitted some documentation.

One July 17, 2007, the director denied the application because the applicant had failed to establish a qualifying continuous residence and physical presence. On appeal the applicant submits additional documentation.

The applicant has submitted some documentation in an attempt to establish a qualifying continuous residence and physical presence, but in an aggregate analysis the body of evidence does not adequately cover the required periods. Even in a light most favorable to the applicant the record only contains one item of evidence, a money order receipt, which is dated prior to December, 2001. This single item of evidence is not sufficiently credible or probative to cover the first 10 months of the required period.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the period from February 13, 2001, to November, 2001. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS will be affirmed.

Although not discussed by the director in her denial decision, the applicant is ineligible as a matter of law due to multiple misdemeanor convictions and a failure to provide the evidence necessary to adjudicate his application. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

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 record reveals the following offenses:

- (1) On February 17, 2003, the applicant was arrested by the Los Angeles Police Department for Battery of Spouse.
- (2) On November 17, 2003, the applicant was arrested by the San Fernando Police Department for Failure to Appear.
- (3) On January 6, 2004, the applicant was arrested by the Los Angeles Police Department for False Proof of Insurance and Failure to Appear.
- (4) On May 14, 2004, the applicant was arrested by the Los Angeles Police Department for Failure to Appear.

- (5) On January 16, 2007, the applicant was convicted of Failure to Display Driver Identification, a misdemeanor, in the Superior Court of Los Angeles County. No. [REDACTED]
- (6) On September 6, 2005, the applicant was convicted of Operating a Vehicle (taxi) without a Permit, a misdemeanor, in the Superior Court of Los Angeles County. No. [REDACTED]
- (7) On November 16, 2004, the applicant was convicted of Operating a Taxi Without a Franchise, a misdemeanor, in the Superior Court of Los Angeles County. No. [REDACTED]

Pursuant to a letter dated April 3, 2007, the applicant was requested to submit the final court disposition for any and all charges on his criminal record. In response, the applicant submitted documents revealing the convictions at numbers 5, 6 and 7, but failed to provide the final dispositions for the other charges listed. The record contains some evidence that the applicant may have been convicted of the other charges listed, but are not conclusive. Without such documentation CIS cannot make an informed determination as to the nature and status of the prior charges listed.

The applicant is ineligible for TPS due to his multiple misdemeanor convictions detailed in Nos. 5, 6, and 7 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Therefore, the application will be denied on this additional basis.

The applicant has failed to provide sufficient evidence revealing the final court disposition of his arrests detailed at numbers one through four above. The applicant is ineligible for Temporary Protected Status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the appeal will be denied also be denied for this reason.

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.