

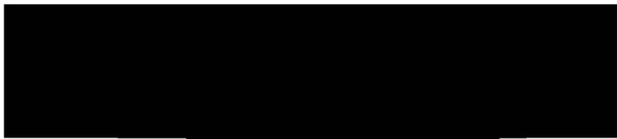
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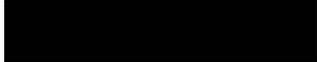
**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

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FILE:



Office: VERMONT SERVICE CENTER

Date: **JAN 22 2008**

[EAC 06 28075821]

INRE:

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.

for Robert P. Wiemann, Chief  
- Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Yermont Service Center (YSC), 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 his eligibility for late registration, and 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 all criminal charges against him.

On appeal, the applicant submits a brief statement and additional documentation.

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. The applicant filed his initial Form I-821, Application for Temporary Protected Status, on July 6, 2006 - more than three years and nine months after the initial registration period had ended.

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.

An alien shall not be eligible for TPS 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).

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 charged with the following offenses: (1) on April 3, 2000, in Riverdale Park, Maryland, one count of "Theft Over [Stiloen (sic) Auto] 300," and one count of "UUUV," (2) on April 19, 2001, in Upper Marlboro, Maryland, "FTA - Theft Over," and (3) on January 24, 2002, in Riverdale Park, Maryland, "Mal Dest PropNalu - \$500," and "Theft - Less \$500."

On March 29, 2007, the director requested the applicant to submit, within 30 days, 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 evidence to establish his eligibility for late registration, as well as the final court dispositions for the above arrests, and any other charges against him. The record reflects that the applicant failed to respond to the director's request.

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 establish his eligibility for late registration and to provide documentation concerning the final court dispositions of his arrests. Therefore, the director denied the application on May 30, 2007.

On appeal, the applicant submits documentation indicating that he untimely responded to the director's request for evidence on May 30, 2007. He also submits photocopies of the following documentation:

1. a "District Court Criminal System Inquiry" print-out stating "No Record Found," dated May 7, 2007, and bearing a received stamp, also dated May 7, 2007, from "Dist. 5 Hyattsville." There is also a hand-written notation on the document stating "Never Charged - Put on probation. Judge said if no repeat offense his record would be cleared;"
2. a United States Treasury tax refund check issued to the applicant on April 20, 2007;

3. earnings statements issued to the applicant and other documentation dated on or after October 2001;
4. the applicant's 2000 and 2001 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements;
5. a birth certificate indicating the applicant as the father of a child born in Prince Georges County, Maryland, on March 26, 2001; and,
6. a letter, dated May 23, 2007, from Sorto & Sorto Stone Work, Beltsville, Maryland, stating that the company had employed the applicant from September 1999 to January 2005.

The applicant claims to have continuously lived in the United States since September 1998. It is reasonable to expect that he would have a variety of contemporaneous evidence to support this claim. The employment letter from Sorto & Sorto Stone Work 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 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, and the period(s) of layoff (if any). Furthermore, the Forms W-2 are not supported by corroborating evidence showing which dates the applicant worked during those years.

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 July 2006, 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.

The applicant is also 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 for this reason will also be affirmed.

Finally, the applicant has failed to provide any evidence that during the initial registration period he fell within any of the provisions described in 8 C.F.R. § 244.2(f)(2) above. Consequently, the director's decision to deny the application for Temporary Protected for this reason will also 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.