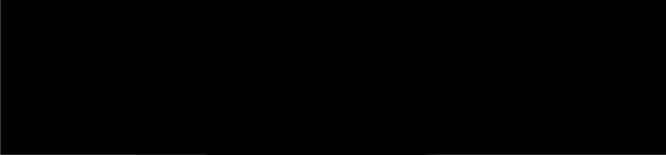


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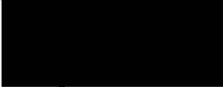
**U.S. Citizenship
and Immigration
Services**

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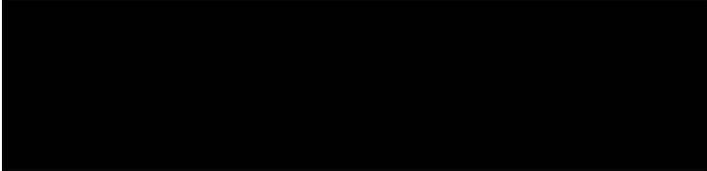
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[consolidated herein]

[EAC 05 222 81858]

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.

Robert P. Wac a , 'ef
Administrative Appeals Office

DISCUSSION: The application was denied by the Director" Vermont Service Center, and is now before the Administrative Appeals Office 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 submit requested final court dispositions, and because he had failed to establish that he continuously resided in the United States since February 13,2001, and had been continuously physically present in the United States since March 9, 2001.

On appeal, the applicant asserts his eligibility for TPS, and submits copies of court dispositions as evidence.

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 first issue is whether the applicant is ineligible for TPS due to his criminal convictions.

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 record reveals the following offenses:

- (a) The applicant was arrested on November 19, 1990, by the Union City Police Department, New Jersey, and charged with simple assault, a misdemeanor. The applicant did not provide a final court disposition with respect to this arrest;
- (b) The applicant was arrested on September 20, 1993, in Stoneham, Massachusetts, and charged with four misdemeanor counts:
 - (1) Illegal possession of class D substance, marijuana;
 - (2) Operating a motor vehicle without a license;
 - (3) Operating after license or Rt. to operate suspended; and,
 - (4) Operating a motor vehicle while drinking alcohol.The applicant was not convicted of these charges;
- (c) The applicant was arrested on July 9, 1994, in Stoneham, Massachusetts, and charged with five counts:

- (1) Malicious destruction of property over \$250.00, a misdemeanor;
- (2) Operating an uninsured motor vehicle, a misdemeanor;
- (3) Attaching the wrong motor vehicle plates to a vehicle, a misdemeanor;
- (4) Operating a motor vehicle without a license, a misdemeanor; and,
- (5) Operating an unregistered motor vehicle.

The applicant was convicted of "Operating a Motor Vehicle Without a License," a misdemeanor, on August 5, 1994, and sentenced to a period of probation;

(d) The applicant was arrested on May 6, 1995, in Brighton, Massachusetts, and charged with two counts:

- (1) Falsifying motor vehicle documents; and,
- (2) Allowing an improper person to operate a motor vehicle.

The applicant was convicted of "Falsifying Motor Vehicle Documents," a misdemeanor. Charge # 2 was dismissed;

(e) The applicant was arrested on February 02, 1994, in Sudbury, Massachusetts, and charged with three counts:

- (5) Assault by Means *DIW* to Wit Stick;
- (6) Mal Alst Per Prop over \$250; and,
- (7) Not Duly Lie.

The final court dispositions for these arrests are not in the record.

(l) The applicant was arrested on April 20, 1997, in North Reading, Massachusetts, and charged with three counts:

- a. Uninsured motor vehicle;
- b. Unregistered motor vehicle; and,
- c. Equipment violation, miscellaneous.

The applicant pled guilty to all three counts, was convicted of uninsured motor vehicle, a misdemeanor, and was found responsible for the other two charges.

(g) The applicant was arrested on July 22, 1997, in Cambridge, Massachusetts, and charged with two counts:

- a. Driver's license suspended; and,
- b. Failure to stop/yield.

The applicant was not convicted of these two charges.

- (h) The applicant was arrested on May 11, 2005, in Medford, Massachusetts, and charged with assault and battery. The charge was dismissed for failure to prosecute on September 29, 2005.

The applicant is ineligible for TPS due to his record of two or more misdemeanor convictions as detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). In addition, the applicant has failed to provide a final court disposition stemming from his arrest in November 1990, and February 1994. Consequently, the director's decision will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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. An extension of the program for El Salvadorans was granted from September 9, 2003 until March 9, 2005. 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 director denied the TPS application on September 11, 2006, because the applicant had failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States.

On appeal, the applicant asserts his claim of eligibility for TPS and submits as evidence tax records for the tax years 2002, 2003, 2004, 2005, and 2006. The applicant also submitted copies of the criminal court disposition records dated from September 1993 to February 1998, and September 2005. The applicant submitted a letter

from Plymouth Rock Assurance in which the Customer Service Specialist stated that the applicant had his vehicle insured with the company from April 19, 2001, to April 19, 2006.

The applicant has not submitted sufficient evidence to establish his qualifying continuous residence since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The tax records submitted by the applicant are dated subsequent to the beginning of the requisite time periods. The applicant's criminal record demonstrates his presence in the country from 1993 to 1998, and during September 2005; however, this evidence does not demonstrate his presence in the United States during the requisite time periods. Proof of registration of the applicant's vehicle since April 19, 2001, is insufficient, without corroborating evidence, to establish his residence in the United States since February 13, 2001.

The applicant has failed to establish that he has met the continuous residence and continuous physical presence criteria described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds will also be affirmed.

An alien applying for TPS 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. The application will be denied for the above reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.