



U.S. Citizenship
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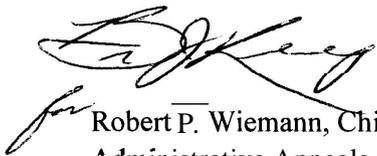
INRE: Applicant: [REDACTED]

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, Vermont Service Center, and 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 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 denied the application because she found that the applicant had failed to submit requested court documentation relating to his criminal record.

In an August 18, 2003, letter, the director notified the applicant of her intent to deny his application and the grounds for the proposed denial. The applicant was granted 30 days in which to submit additional evidence, however, he failed to respond to the director's notice.

On appeal, the applicant states that he had good cause for his failure to respond to the director's request for additional evidence. The applicant submits additional evidence in support of the appeal.

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
- (t)
 - (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 designation of TPS for El Salvadorans has been extended several times, 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 has established his continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001.

On August 18, 2003, 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. The applicant submitted no response to the director's request for additional evidence.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on February 12, 2004.

On appeal, the applicant states that his roommates failed to give him the director's August 18, 2003, letter. However, because he received an Employment Authorization card, he "assumed that everything was fine" until he received the director's denial notification. The applicant submits the following documentation on appeal:

1. A copy of a January 9, 2000, receipt from Electronic Plus in Washington, DC. The receipt does not show an address for the applicant.
2. A copy of a Form 1-387, Report of Detainees Missing Property, dated March 29, 2001, reflecting that the applicant was apprehended at a Greyhound bus station in Las Vegas, Nevada on February 3, 2001.
3. A March 28, 2001, document in Spanish. The applicant did not provide a translated copy of the document as required by 8 C.F.R. § 103.2(b)(3); however, it appears to be notification to the applicant that he could be eligible for TPS and that he needed to file a Form 1-821, Application for Temporary Protected Status, and a Form 1-765, Application for Employment Authorization.
4. A copy of a City of Las Vegas Detention and Enforcement Inmate identification card for the applicant, which shows a booking number of [REDACTED]
5. Copies of receipts issued to the applicant from Professional Translation Service in Hollywood, California. The receipts are dated April 27 and May 1, 2001, and show the applicant's address as [REDACTED] in Los Angeles.
6. A copy of a July 30, 2001, receipt from the Field Office Manager of the Social Security Administration in Washington, DC, noting that the applicant had filed for a Social Security card on that date. The applicant's address is listed as [REDACTED] in Washington, DC.
7. A copy of the applicant's September 25, 2001, identification card issued by the Commonwealth of Virginia. The card shows the applicant with an address of [REDACTED] Arlington, Virginia.
8. A partial copy of progress notes from the Washington Hospital Center in Washington, DC, indicating that the applicant had received emergency service at the hospital following a traffic accident on November 7, 2001. The notes do not list an address for [REDACTED] however, a November 11, 2001 bill from the hospital lists the applicant's address as [REDACTED] in Washington, DC.
9. A partial copy of a Patient Consent and Release signed by the applicant on November 28, 2001. No address is listed for the applicant.

10. A copy of a January 3, 2002, medical bill from [REDACTED] addressed to the applicant at [REDACTED] in Washington, DC.
11. A copy of a March 17, 2002, Southwest Airlines ticket receipt and a copy of a March 18, 2002, boarding pass for the applicant. The receipt indicates that the applicant flew from the Baltimore/Washington International Airport to Los Angeles. No address is shown for the applicant.
12. A partial copy of an April 18, 2002, approval for medical assistance addressed to the applicant [REDACTED] in Washington, DC.
13. A copy of an April 26, 2002, creditor's statement addressed to the applicant at [REDACTED] in Washington, DC.
14. A copy of a May 1, 2002, letter and a May 22, 2002, prescription for the applicant from the Braner Clinics, Inc., in Falls Church, Virginia. Neither shows an address for the applicant.
15. A copy of receipts dated July 23, 2002, and September 5, 2003, showing the applicant as the remitter. Although each indicates that it is for TPS, neither identifies the company that issued the receipt or an address for the applicant.
16. A copy of a July 21, 2003, letter from [REDACTED] addressed to the applicant [REDACTED] in Washington, DC.
17. A copy of an envelope from the Vermont Service Center addressed to the applicant at [REDACTED] in Washington. The envelope is postmarked in February 2004.

The record reflects that on September 27, 1995, an immigration judge granted the applicant voluntary departure from the United States with an alternate order of deportation to El Salvador. A Warrant of Deportation was issued for the applicant on February 22, 1996. The applicant was apprehended on February 9, 2001, and held pursuant to this warrant. The applicant stated at that time that he was traveling from Washington, DC to visit relatives, and had been in the United States illegally for over one year. He indicated that he had been deported on December 11, 1995, and had reentered illegally in January 1996. He was released on March 10, 1996, and was interviewed regarding his possible eligibility for TPS. The applicant indicated at that time that his address was [REDACTED] in Hollywood, California.

The record contains copies of two Forms W-2, Wage and Tax Statements, issued to the applicant for the year 1996. One indicates an address for the applicant in Arlington, Virginia, and the other an address in Alexandria, Virginia. The applicant also submitted a copy of a Form 1040, U.S. Individual Income Tax Return, and a copy of a Form 760, Virginia Resident Income Tax Return, for the year 1996. However, the tax returns are not signed or dated, and there is nothing in the record to indicate that they were filed with the appropriate tax authorities.

While the applicant has submitted documentation to establish his presence in the United States on February 13, 2001, he has not submitted any evidence to establish his qualifying continuous residence as of that date. The record reflects that the applicant was in the custody of immigration officials on February 13, 2001, after being apprehended on a trip to visit with his sister in California. However, the applicant provided no evidence that he maintained a residence in the United States as of February 13, 2001. He has, thereby, failed to establish that he has met the criteria described in 8 C.F.R. §§ 244.2(c). Consequently, the director's decision to deny the application for TPS based on this ground will be affirmed.

The second issue in this proceeding is whether the applicant failed to submit documentation of his criminal history.

An alien shall not be eligible for TPS 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).

The regulation at 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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record reveals that on May 19, 2003, the applicant was arrested by the Washington, DC Police Department, and charged with simple assault-domestic.

Pursuant to a letter dated August 18, 2003, the applicant was requested to submit the final court disposition for each offense for which he had been charged. As noted above, the applicant did not respond to the director's request for evidence, and the director denied the application on February 12, 2004.

The applicant subsequently submitted a copy of a certified copy of an order from the Superior Court of the District of Columbia, indicating that on July 23, 2003, the case was dismissed without prejudice. The applicant has, therefore, provided evidence of the final disposition of the offense for which he was charged. Accordingly, the director's denial of the application based on this ground is withdrawn.

However, as the applicant has not established that he resided continuously in the United States from February 13, 2001, the application must be denied.

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.

ORDER: The appeal is dismissed.