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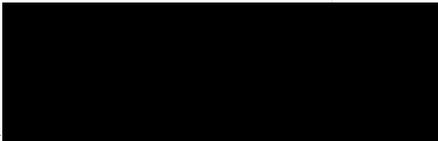
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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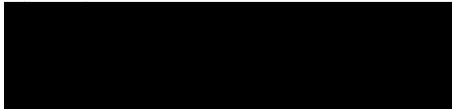
[REDACTED]
[EAC 02 270 52814]

OFFICE: Vermont Service Center

DATE: APR 12 2005

IN RE:

Applicant:

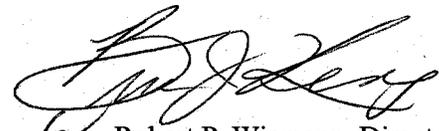


APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: 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, Director
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 that the applicant had failed to submit requested court documentation relating to his criminal record. The director also 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 from March 9, 2001, to the date of filing his application.

On appeal, the applicant asserts his eligibility for TPS and provides additional evidence in support of his claim.

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.
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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) On December 12, 2000, the applicant was arrested and charged with 1-266:230 | Trespass.
- (2) On July 23, 2001, the applicant was arrested and charged with 1-265:16 | Murder, Attempted C265 S16.
- (3) On July 23, 2001, the applicant was arrested and charged with 1-265:016 | Attempted Murder.

Pursuant to a letter dated April 30, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant was also requested to submit evidence that he had reregistered for TPS between September 9, 2002 and November 12, 2002. In addition, the applicant was requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the date of filing his application.

In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant also submitted court documentation relating to the following arrests: Assault to Murder, Armed c265 §18(b) and A&B with Dangerous Weapon c265 §15A(b) which occurred on July 22, 2001; four counts of Utter False Check c267 §5 which occurred between October 14, 2000 and October 24, 2000; Trespass c266 §120 and Miscellaneous Munic Ordinance/By Law VI that occurred on July 7, 2000; and Drug, Possess Class D c94C §34 that occurred on October 31, 1999.

The director determined that the applicant had failed to submit the final disposition of every charge against the applicant as requested, specifically the indictment for Armed Assault to Murder and A&B with Dangerous Weapon [REDACTED]. Therefore, the director denied the application on September 30, 2003.

On appeal, the applicant states that he had submitted all the requested evidence to establish his physical presence in the United States since February 13, 2001. The applicant also states that he believes that he has complied with all requests and all the requirements. The applicant further states that the Service has requested a court document that does not exist.

Along with his appeal, the applicant also submits a letter dated October 6, 2003, from his attorney, [REDACTED] regarding his past arrest under docket number [REDACTED] for Assault to Murder, Armed and A&B with Dangerous Weapon. The applicant provides copies of a case summary from the [REDACTED] Court. In addition, the applicant submits copies of hand-written rent receipts dated January 1, 2001, February 1, 2001, and March 1, 2001.

The applicant's attorney, Mr. [REDACTED] states that the applicant's case, under docket number [REDACTED] remains open with the Suffolk Superior Court in Boston, Massachusetts. A review of the case summary reflects that a hearing was scheduled for November 7, 2003. The applicant, however, has failed to provide evidence revealing the final court disposition of his arrest detailed 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).

The other 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, to the date of filing his application.

On appeal, the applicant submits three copies of hand-written rent receipts. The copies of the receipts provided by the applicant are not supported by any other corroborative evidence. While 8 C.F.R. § 244.9(a)(2)(vi) specifically states that additional documents such as rent receipts "may" be accepted in support of the applicant's claim, the regulations do not suggest that such evidence alone is necessarily sufficient to establish the applicant's qualifying residence or physical presence in the United States. The applicant claims to have lived in the United States since 1997. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support these receipts. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the residence and physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will also be affirmed.

It is also noted that another record, [REDACTED] relating to the applicant, was created on July 19, 1993.

The applicant appears to be represented; however, the record does not contain Form G-28, Notice of Entry of Appearance as Attorney or Representative. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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.