U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 30 2007

[EAC 04 034 53568, MOTION]
[EAC 01 172 51367]

IN RE: 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:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. An appeal filed by the applicant was treated as a motion to reopen, and the director again denied the application. The applicant appealed the director's decision on the motion, and it 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 initially denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On motion, the applicant asserts that he never received the request for additional information. The applicant also submits additional evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period.

The director determined that the applicant had failed to overcome the grounds for denial and denied the application again.

On appeal, counsel for the applicant requests that he be given 30 days in which to submit a brief and/or evidence. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;

(e) Is not ineligible under 8 C.F.R. § 244.4; and

(f) (1) Registers for TPS 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;
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> (iii) The applicant is a parolee or has a pending request for reparole; or
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> (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The term *continuously physically present*, as used 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 term *continuously resided*, as used 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.

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.
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> *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.
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> 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 13, 1999, the applicant was arrested by the Herndon, Virginia Police Department and charged with domestic violence.

(2) The applicant indicated on his TPS application that he had been arrested three times for "Driving While Intoxicated".

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension granted until September 9, 2007, upon the applicant's re-registration during the requisite 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 record shows that the applicant filed his TPS application on April 9, 2001. On February 14, 2002, the applicant was provided the opportunity to submit evidence establishing continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit the final disposition of every charge against him. The applicant failed to respond to the notice.

The director initially denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On motion, the applicant stated that he did not know his application was denied and never received a notice requesting additional evidence. According to the applicant, he informed CIS of his change of address. The applicant also submitted:

1. Statements from [redacted]

2. A copy of a receipt from Peruvian Motors dated December 2, (unreadable) and from Virginia Department of Motor Vehicles dated March 17, 2000.

3. Copies of Nationwide Insurance receipts dated May 30, 2000, June 15, 2000, July 8, 2000, August 14, 2000 and October 4, 2000, and a Colonial Insurance receipt dated February 14, 2000.

The applicant also submitted documents from a case he claimed was "resolved positively under the same facts and circumstance of the one submitted in this motion."

The director determined that the applicant did submit a change of address, however it was not submitted until August 13, 2003. The request for additional evidence was sent on February 14, 2002, and, the TPS application was originally denied on February 19, 2003. The director also determined that the applicant failed to submit final court dispositions for all of his arrests. The director, therefore found that the applicant had not overcome the basis for the denial and denied the application again.

On motion, counsel for the applicant requests that he be allowed to submit a brief and/or evidence within 30 days. To date, there has been no further correspondence from the applicant or counsel. Therefore, the record must be considered complete.

Ms. [redacted] and Ms. [redacted] state that they have known the applicant since he arrived in the United States in April 1999. Mr. [redacted] states that he has known the applicant for 25 years since they lived in El Salvador. Ms. [redacted] Ms. [redacted], and Mr. [redacted]' statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits are not, by themselves, persuasive evidence of residence or physical presence. Ms. [redacted] does not indicate when the applicant entered the United States. Furthermore, Ms. [redacted] has not demonstrated that her knowledge of the applicant's presence in the United States is independent of her personal relationship with the applicant. If this knowledge is based primarily on what the applicant told her about his entry into the United States, then her statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony.

The statement from Ms. [redacted] appears to be altered, with the date of employment changed by hand. This discrepancy has not been satisfactorily explained. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988).

The remaining evidence is dated prior to the requisite dates to establish continuous residence since February 13, 2001 and continuous physical presence in the United States from March 9, 2001 to the date of filing the TPS application. It is also noted that the "similar" case provided by the applicant has no bearing on the present case and will therefore not be considered.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). In addition, the applicant has not provided the requested court documentation relating to his criminal history. Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

It is also noted that the record contains a statement from the applicant's wife, which was received by CIS on May 25, 2004, in which she responded to a CIS Notice of Action. According to the applicant's wife, he would be unable to keep an appointment to have his fingerprints taken on May 6, 2005 because he would not be released from incarceration until June 25, 2005. This is further evidence that the applicant may be ineligible for TPS because of his criminal convictions. It is also noted that the applicant has still failed to provide the requested final court dispositions for his arrests, including the one to which his wife refers.

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.