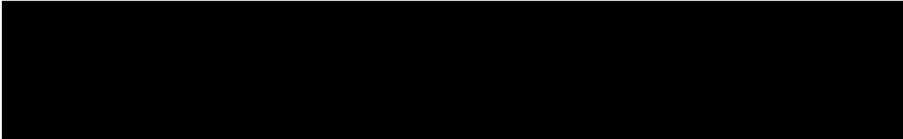


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FILE:

[WAC 01 226 53040]

Office: CALIFORNIA SERVICE CENTER

Date: FEB 28 2007

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:



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.

Cindy M. Gomez
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence, specifically requesting evidence of his continuous physical presence and continuous residence, and evidence of all of the final court dispositions for all of his arrests.

On appeal, counsel submits a statement.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record of proceeding contains the Federal Bureau of Investigation fingerprint results report indicating that the applicant was arrested on July 26, 2001, in Los Angeles, California, for "BAT, SPOUSE/EX SP/DATE/ETC." In a notice of intent to deny dated January 8, 2004, the applicant was requested to submit the final court disposition of this arrest and of any and all arrests in the United States. He was also requested to submit evidence to show that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present since March 9, 2001, to the date of filing his application.

The director noted that the applicant's response to his request was received at the Service Center on March 5, 2004, after the allowed date of February 8, 2004. The director, therefore, concluded that the applicant had abandoned his application and denied the application on March 22, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. The response was received by the California Service Center on March 5, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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.

On appeal, the applicant, through counsel, indicated that he was not informed or notified that he would absolutely be denied for non-compliance. He explained that he attempted to get his file transferred from the San Pedro Court to the Long Beach Court in California, but it took more than 30 days for the transfer. The applicant resubmitted the court disposition of his arrest indicating that on July 26, 2001, the applicant was arrested for

Count 1, battery on school property, 242-243.2(a) PC, a misdemeanor; and Count 2, battery, 242 PC, a misdemeanor. On August 27, 2001, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months under the condition that he serve 3 days in the county jail, and was ordered to pay \$188 in fines and costs. Count 1 was dismissed.

The applicant's one misdemeanor conviction does not render him ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act. Therefore, the director's decision to deny the application for this reason will be withdrawn.

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

The term *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.

The term *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.

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 valid until September 9, 2007, 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 record shows that the applicant filed his TPS application on May 10, 2001. Because the evidence of record did not adequately illustrate that the applicant was clearly eligible for the benefit sought, he was requested, in a notice of intent to deny dated February 5, 2003, to submit evidence to show that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present from March 9, 2001, to the date of filing the application. In response, the applicant submitted:

1. A copy of a Sprint statement dated November 22, 1999.
2. Copies of a "Special Order" and an "Invoice" from Bellflower Motorsports both dated September 16, 2000.

The director noted that evidence previously furnished by the applicant to establish continuous residence and continuous physical presence in the United States was insufficient. A second notice of intent to deny was

issued on January 8, 2004, and requested that the applicant submit additional evidence. In response, the applicant submitted:

3. A copy of a receipt from the American Security Insurance Company dated February 17, 2000.
4. A copy of a Sprint statement dated March 22, 2000.
5. A copy of the applicant's court record regarding his arrest in Los Angeles on July 26, 2001, [previously addressed].
6. A statement from WorldCom Wireless dated February 9, 2002, for the billing period of December 16, 2001 to January 15, 2002.

The evidence of record shows that the applicant was present in the United States as of September 2000. However, no evidence was furnished to establish that the applicant was continuously residing in the United States since February 13, 2001, and that he has been continuously physically present from March 9, 2001, to the date he filed his application on May 10, 2001.

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

The record of proceeding contains Form I-213, Record of Deportable Alien, indicating that the applicant was apprehended by Service officers at McCarran Airport in Las Vegas, Nevada, on May 19, 1996. At that time, he presented to the officers a counterfeit lawful permanent residence card (Form I-551) and a social security card, both bearing his name, and stated that he paid \$20 for the counterfeit documents. Therefore, the applicant also is inadmissible to the United States, pursuant to section 212(a)(6)(C)(i) of the Act, as an alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or entry into the United States, or other benefit, provided under this Act.

The record contains an unexecuted Warrant of Removal/Deportation, Form I-205, issued in Las Vegas, Nevada, on January 26, 1998, based on the final order of removal by an Immigration Judge on January 16, 1998.

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.