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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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OCT 28 2009

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
[EAC 07 005 72129]

IN RE: Applicant: [REDACTED]

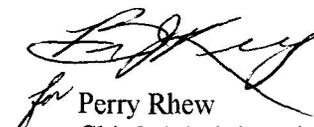
APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

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 Vermont Service Center. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) 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 determined that the applicant failed to establish that he was eligible for filing his TPS application after the initial registration period from March 9, 2001 through September 9, 2002. The director also found that the applicant had failed to submit requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, counsel for the applicant states that no conviction or charges were ever filed against the applicant. The applicant also submits evidence in support of this 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 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;

- (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.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

The record reveals that on November 13, 2005, the applicant was arrested by the Dallas, Texas Police Department for possession of marijuana less than two ounces.

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.

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.

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, 2010, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed the current TPS application on October 5, 2006 and indicated that it was his first application. The record indicates that the applicant had filed an initial TPS application under receipt number SRC 01 175 56450 on April 9, 2001. The Director, Texas Service Center, denied that application on August 4, 2004. On September 1, 2004, the applicant appealed the director's decision. That appeal was dismissed by the AAO on March 6, 2007. The applicant filed a subsequent TPS re-registration application on March 7, 2005 under receipt number WAC 05 218 70393. The Director, California Service Center, denied that application on July 23, 2005. On May 8, 2006, the applicant appealed the director's decision. The Director, California Service Center, rejected the appeal as untimely on June 6, 2006. The AAO rejected the appeal as untimely on March 6, 2007.

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 United States Citizenship and Immigration Services (USCIS). 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 issued a Notice of Intent to Deny on April 10, 2007, which provided the applicant the opportunity to submit court documentation relating to his criminal record.

The applicant, in response, submitted a court document from the County Criminal Court of Dallas County, Texas, which indicated its indexes had been searched from 1985 through April 17, 2007, and the court was unable to locate any charges filed against [REDACTED]. The applicant also submitted a Certificate of Achievement dated February 22, 2006, from the Dallas Police Department for completion of a First Offender Program.

The director, in denying the application, noted that the court document indicated that no record of any charges filed against [REDACTED] was found. The director noted that the applicant used the name "[REDACTED]" at the time of the arrest. The director determined that the Certificate

of Achievement for completion of a First Offender Program indicated there had been an arrest and conviction. The director also determined that the applicant did not present evidence of his eligibility for late registration. Therefore, the director denied the application on June 23, 2007.

On appeal, counsel for the applicant states that no record of a charge or conviction was ever filed, and submits a copy of a letter from the Dallas County, Texas District Clerk indicating that no record of any charges filed against [REDACTED] was found.

If an applicant is sentenced under a state counterpart to the Federal First Offender provision of the Controlled Substances Act, the applicant shall not be considered to have been convicted for immigration purposes. The applicant has provided documentation indicating he had successfully completed the First Offender Program and no charges were filed against him.

It is noted that the director identified the applicant as Honduran in the Notice of Intent to Deny and the denial decision. The record reflects that the applicant was born in Honduras of El Salvadoran parents, and is a citizen of El Salvador. Counsel, in supplementing the appeal, provides a copy of the applicant's El Salvadoran passport. The correct criterion for El Salvadoran has been applied in rendering the AAO's decision.

The record of proceeding confirms that the applicant filed this current application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). 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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

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.