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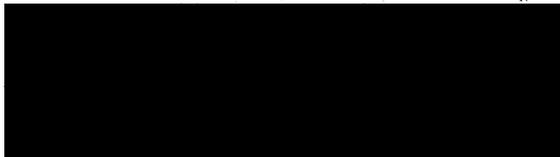
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm., A3042
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: VERMONT SERVICE CENTER

Date APR 11 2005

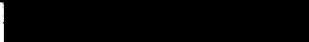
[EAC 02 239 50082]

IN RE:

Applicant:



AKA:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".
for Robert P. Wiemann, Director
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 denied the application because the applicant failed to establish his continuous physical presence in the United States during the requisite timeframe. The director also found that the applicant failed to provide the final disposition of his arrest.

On appeal, the applicant provides a brief statement and additional documentation.

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 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.

The first issue raised by the director to be addressed in this proceeding is whether the applicant has established his continuous physical presence in the United States during the required timeframes.

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.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

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. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period. The record reveals that the applicant filed his application with the Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on July 3, 2002.

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 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).

In a notice of intent to deny, dated September 4, 2003, the applicant was requested to submit evidence to establish his continuous physical presence in the United States during the requisite timeframe. In addition, the applicant was requested to provide the final disposition of his arrest by the Westminster, Maryland police department on March 22, 2002. The applicant was advised, "the charge and disposition must be specifically identified (not just numeric citations or codes)."

The director found that the applicant, in his response to the notice of intent to deny, provided documentation "not specifically identified with the charges and final disposition," and that the "charges of theft less than \$500 and false statement from your arrest by the Westminster Police Department were not specified." In addition, the director found that the applicant failed to provide evidence of his continuous physical presence in the United States since March 9, 2001. The director denied the application on November 13, 2003.

On appeal, the applicant states that he moved and lost many papers with different dates. The applicant states that he has had a Social Security number since August 2002, and is submitting copies of receipts since that time. The applicant submits: one money transfer receipt for 1999; one money transfer receipt for 2000; six money transfer receipts for 2001; six money transfer receipts for 2002; a Maryland Vehicle Emissions Inspection Notice dated May 23, 2001; a Form W-2, Wage and Tax Statement, for 2001, showing wages for that year as \$15, 894.90; and, a Form W-2, Wage and Tax Statement, for 2002, showing wages for that year as \$21, 867.11.

The documentation submitted on appeal is sufficient in demonstrating the applicant's continuous physical presence in the United States since March 9, 2001. The applicant has provided sufficient evidence to establish that he has met the criteria described in 8 C.F.R. § 244.2(b). Consequently, the applicant has overcome this portion of the director's decision.

The remaining issue raised by the director to be addressed in this proceeding is whether the applicant provided the final disposition of his arrest on March 22, 2002, case [REDACTED]

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General [now the Secretary of the Department of Homeland Security (the Secretary)] finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

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 felony or misdemeanor.

The Federal Bureau of Investigation report, contained in the record of proceeding, reflects that the applicant was arrested on March 22, 2002, in Westminster, Maryland. The applicant was charged with "theft less \$500" and "false statement." The applicant, as previously stated, was requested on September 4, 2003, to submit the final disposition of this arrest. Because the applicant failed to submit the requested information, the director denied the application on November 13, 2003.

On appeal, the applicant provided no documentary evidence to address this issue. The applicant has failed to provide the disposition of the above-mentioned arrest. Consequently, the director's decision to deny the TPS application on this ground 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.