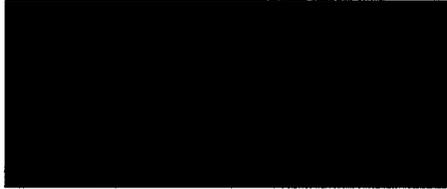


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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



M1

FILE:



Office: Vermont Service Center

Date: DEC 09 2005

[EAC 01 201 53068]

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, 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 because the applicant failed to respond to a request for evidence to establish his "physical presence in the United States from March 9, 2001, to the date of filing." The applicant also failed to provide the final court dispositions of the charges relating to his criminal record. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, the applicant submits additional evidence in support of his eligibility for TPS.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS 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 under § 244.3;
- (e) Is not ineligible under § 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 parole; 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 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.

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. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. 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.

Further, 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.

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.

The Federal Bureau of Investigation fingerprint results report reveals the following offenses in New York:

- (1) On December 9, 1995, the applicant was arrested for "DWT" by the Suffolk County Police Department;
- (2) On November 23, 1996, the applicant was arrested for "Petit Larceny" by the Suffolk County Police Department under the alias [REDACTED];
- (3) On July 8, 2000, the applicant was arrested for "VLT 1192.03 - DWI" and "VTL 1192.02 DWI/B.A.C. > .10%" by the Suffolk County Police Department; and,
- (4) On August 5, 2000, the applicant was arrested for "VTL 0511.03A (I) Aggrav. Unlic" and "VTL 1192.03 D.W.I Plus .02 B.A.C. More than .10% DWI" by the Suffolk County Police Department.

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).

Pursuant to notices of intent to deny the application for TPS dated May 6, 2003, and December 4, 2003, the applicant was requested to submit the final court dispositions for the charges as detailed above. The applicant was also requested to submit evidence establishing his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. The applicant did not respond to the director's requests. The director, therefore, denied the application on May 26, 2004, because the director determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, the applicant submits the following documents: copies of his New York State Driver Licenses issued on November 30, 2001, and on May 13, 2003; an employment letter dated June 11, 2004, from Mr. [REDACTED] President of [REDACTED] Ltd., who stated that the applicant had been employed by him since March 1999; a transcript dated June 7, 2004, from the District Court of Suffolk County, in New York, reflecting that the applicant plead guilty to VTL 1192.2 and VTL 511.2; copies of his Internal Revenue Service (IRS), Form W-2, Wage and Tax Statements, and U.S. Individual Income Tax Returns, for the years 2002 and 2003; copies of his New York Resident Income Tax Returns for 2002 and 2003; a copy of a letter dated March 25, 2002, from the IRS regarding adjustments to his 2001 Income Tax; a copy of an earnings statement from [REDACTED] Ltd, for the pay period from May 31, 2004 to June 6, 2004; a copy of the birth certificate of his son, [REDACTED] born on January 10, 2004; and copies of a New York State Office of Court Administration Record Search printout dated June 17, 2004, reflecting that the applicant plead guilty and was charged with VTL 1192.2, a misdemeanor, and VTL 511.2, also a misdemeanor.

The first issue in this proceeding is whether the applicant has established his qualifying continuous physical presence in the United States.

A review of the record of proceedings reflects that the applicant has provided sufficient evidence to establish his continuous physical presence in the United States since March 9, 2001, to the date of filing his application. Therefore, the portion of the director's decision to deny the application based on this ground will be withdrawn.

The second issue in the proceedings concerns the charges relating to the applicant's criminal record.

A review of the documentation reflects that the applicant provided the final court dispositions regarding his arrests on July 8, 2000, and August 5, 2000, (Nos. 3 and 4 above) reflecting that the applicant was convicted of two misdemeanors. Therefore, the applicant is not eligible for temporary protected status because he has been convicted of two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Additionally, the applicant has failed to provide the final court dispositions regarding his arrests on December 9, 1995, and on November 23, 1996, under the alias of Mr. [REDACTED] (Nos. 1 and 2 above). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

An alien applying for TPS 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.