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

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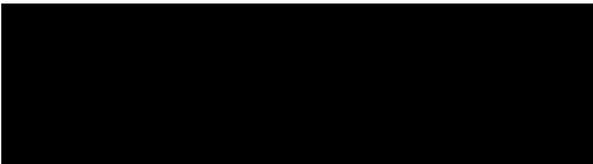
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FILE:  OFFICE: Vermont Service Center DATE: JUL 11 2005

IN RE: Applicant: 

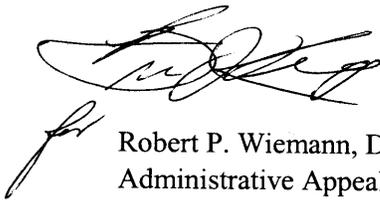
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. The application 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 had failed to submit requested court documentation relating to his criminal record. The director also denied the application because the applicant failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

On appeal, counsel, on behalf of the applicant, submits additional evidence in support of the applicant's claim of eligibility for TPS.

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.
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 that the applicant was arrested on June 16, 1995, for Driving While Intoxicated Auto. Pursuant to a letter dated January 8, 2002, the applicant was requested to submit the final court disposition for this charge. The applicant was also requested to submit evidence establishing his continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. On April 3, 2001, counsel, on behalf of the applicant, responded to the director's letter and requested additional time to submit the additional evidence. Counsel further stated that he anticipated that he would have the court disposition within two months. However, no additional evidence was submitted by counsel, or the applicant. The director determined that the applicant failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods. The director also noted that the applicant did not provide the disposition for his past arrest. The director, therefore, denied the application on April 2, 2003.

On appeal, counsel, states that the arrest for which the appellant (applicant) had to answer did not result in a conviction which would render the applicant statutorily ineligible. Counsel, on appeal, also submits the following documentation; a copy of a Violation of Probation dated July 19, 1996, from Senior Probation Officer [REDACTED]; a true excerpt from the First District Court of Nassau County reflecting the final disposition of the applicant's arrest on June 16, 1995; a letter dated May 8, 2002, from [REDACTED] Therapist for the Hispanic Counseling Center, Inc, who states that the applicant had been admitted to her program on March 6, 2002; copies of the applicant's marriage certificate reflecting that the applicant was married on November 21, 1998 in the Town of Hempstead, New York; a copy of a letter dated January 22, 2002, from [REDACTED] who stated that the applicant has lived continuously in the United States since February 13, 2001; an affidavit dated January 28, 2002, from [REDACTED] who stated that he has known the applicant since 1996; an employment letter dated January 21, 2002, from [REDACTED] of Kravet Fabrics, Inc, who stated that the applicant has been employed by her company since August 14, 1996; a copy of an affidavit dated January 29, 2002, from his brother-in-law, [REDACTED] who stated that the applicant has lived continuously in the United States since February 13, 2001; a copy of the applicant's loan statement dated September 24, 2001, from Washington Mutual; an undated copy of a letter from the Federal Housing Commissioner, Department of Housing and Development, regarding the applicant's house purchase; and copies of installment agreement letters from The Revenue Maximization Group, Inc. dated October 5, 1999, October 25, 1999, and October 26, 1999.

A review of the court disposition from the First District Court of Nassau County reflects on July 25, 1995, the applicant plead guilty to and was convicted of Operating a Motor Vehicle While Under the Influence of Drug or Alcohol (VTL 1192.2), a misdemeanor. The record reflects that this is the only conviction against the applicant. The director's decision to deny the application based on this issue is withdrawn.

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

The letters from The Revenue Maximization Group, Inc. pre-date the beginning of the requisite time period for continuous residence and continuous physical presence in the United States by over a year. The loan statement from Washington Mutual post-dates the beginning of the qualifying time periods by over six months. The letter from the Department of Housing and Development is undated, and thus, has little, if any evidentiary weight. In addition, the employment affidavit from [REDACTED] has little evidentiary weight or

probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, [REDACTED] does not provide the address where the applicant resided during the period of his employment. In addition, the church letter from [REDACTED] has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church. Also, although [REDACTED] stated in his affidavit that he has known the applicant since 1996, he does not indicate whether his acquaintance with the applicant was in the United States. The statements from the applicant's brother-in-law, [REDACTED] regarding the applicant's residence since February 13, 2001, are not supported by corroborative evidence. Affidavits from acquaintances and family members are not, by themselves, persuasive evidence of residence or physical presence. The applicant claims to have lived in the United States since September 18, 1990. It is reasonable to expect that the applicant would have some other type of contemporaneous evidence to support his continuous residence and continuous physical presence in the United States during the requisite time periods of eligibility for TPS. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). It is determined that the documentation submitted by the applicant is not sufficient to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application for TPS on these grounds 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.