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



U.S. Citizenship
and Immigration
Services

MI

FILE:

[EAC 02 028 53065]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 29 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:

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

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.

The applicant filed his initial Form I-821, Application for Temporary Protected Status, with the Immigration and Naturalization Service (INS), now CIS, on September 21, 2001. In support of the application, the applicant submitted the following documentation:

1. A photocopy of his El Salvadoran birth certificate, with English translation;
2. Photocopies of pages from his El Salvadoran passport; and,
3. Photocopies of envelopes addressed to the applicant in New York, with stamps dated February 8, 1999, and October 25, 2000.

In connection with his application, the applicant was required to appear for fingerprinting. As a result of being fingerprinted, CIS received a report indicating that the applicant had been arrested on August 24, 1996, by the Suffolk County Police Department, under the name of [REDACTED] and charged with one count of Driving While Intoxicated and one count of Leaving Scene of Motor Vehicle Accident.

On April 28, 2003, the director requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant was also requested to submit a final court disposition of his arrests, detailed above, and any other charges against him. In response, the applicant provided the following:

4. A letter, dated May 6, 2003, from [REDACTED] President of Long Island Precast, Inc., Brookhaven, New York, stating that he had known the applicant since February 2001 and currently employed him;
5. A letter, dated November 27, 2001, from the Social Security Administration, Patchogue, New York, stating that the applicant had applied for a social security card;
6. A photocopy of one page from his 2002 Internal Revenue Service (IRS) Form 1040-A, U.S. Individual Tax Return;
7. A postal money order receipt, dated March 10, 2001;

8. Earnings statements from Long Island Precast, Inc., for the one-week pay periods ending on July 20, 2002; August 3, 2002; August 17, 2002; and, January 11, 2003; and,
9. A letter, dated July 8, 2003, from attorney [REDACTED] Patchogue, New York, stating that the applicant pled guilty to Driving While Intoxicated, in violation of New York Vehicle and Traffic Law section 1192(2), on June 27, 2003.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence in the United States during the requisite time period. The director also determined that the applicant had failed to provide the final court disposition of all of the charges against him. The director denied the application on August 14, 2003.

On appeal, the applicant submits the following additional documentation:

10. A letter, dated September 6, 2003, from his landlord [REDACTED], stating that the applicant had resided at his current address since March 2, 2001;
11. A photocopy of a lease agreement, signed by the applicant and [REDACTED] dated April 21, 2002, for a term of 14 months beginning on June 1, 2002, and ending on July 31, 2003; and,
12. A letter, dated September 9, 2003, from attorney [REDACTED] stating that the applicant's guilty plea to DWI "was in full satisfaction of other charges that were pending and those charges were dismissed," and that sentencing is "now scheduled for September 22, 2003."

The applicant claims to have last entered the United States on September 15, 1993. It is reasonable to assume that he would have a variety of contemporaneous evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001, through to the date of filing his Form I-821 on September 21, 2001. The documentation detailed in No. 3, above, is dated prior to the dates required for establishing continuous residence and continuous physical presence, and Nos. 5, 6, 8, and 11 are all dated after the filing date of the application. The employment letter (No.4) 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, it is not in the form of an affidavit and does not provide the address where the applicant resided during the period of his employment, the exact period(s) of employment, and the period(s) of layoff (if any). Similarly, No. 10 has little weight or value as it is not in the form of an affidavit and is not supported by corroborative evidence, such as rent receipts and/or a signed lease agreement. The only document provided by the applicant that is within the required periods of time to establish continuous residence and continuous physical presence is No. 7.

It is concluded that the applicant has failed to provide sufficient evidence to establish that he has continuously resided in the United States since February 13, 2001. Consequently, the director's decision to deny the application for this reason will be affirmed.

Furthermore, Nos. 9 and 12, above, do not constitute evidence of the final court disposition of the charges against the applicant. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The applicant is, therefore, 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 this reason will also be affirmed.

Beyond the decision of the director, the applicant has also failed to provide sufficient evidence to establish his qualifying continuous physical presence in the United States since March 9, 2001. The application also may not be approved for this reason.

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.

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U.S. Citizenship and Immigration Services

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[Redacted]

FILE: [Redacted]
[SRC 02 057 52437]

OFFICE: TEXAS SERVICE CENTER

DATE: JUL 29 2005

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:

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Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The case will be remanded to the director for further action.

The applicant claims to be 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 was ineligible for TPS because he was convicted in Harris County, Texas, on September 28, 1995, of the misdemeanor offense of theft, and on May 21, 1998, of the misdemeanor offense of driving while intoxicated. The director, therefore, denied the application.

The record reveals that this application was initially assigned to an incorrect immigration file [REDACTED] which relates to [REDACTED]. The information pertaining to [REDACTED] was compared with the applicant's TPS application, as well as to the information contained in the applicant's previous file [REDACTED] that was created at the time of the applicant's previous apprehension and subsequent deportation on October 28, 1992. The fingerprint records confirm that the information relating to [REDACTED] (including the two misdemeanor convictions cited as the basis for the director's denial) do not relate to this applicant. Therefore, the director's decision to deny the application based on the record of those two misdemeanor convictions will be withdrawn.

However, an alien shall not be eligible for TPS if the Attorney General finds that there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States. Sections 244(c)(2)(B)(ii) and 208(b)(2)(A)(iii) of the Immigration and Nationality Act (the Act).

The applicant's true immigration record reveals the following offenses:

- (1) On September 23, 1992, in Montreal Canada, the applicant was convicted of Count 1, attempt to obstruct justice, section 127(2) Criminal Code; Count 2 assault with a weapon, § 245.1(1)(a) Criminal Code; Count 3 possession of a weapon, § 85 Criminal Code; and Count 4, uttering threats, § 243.4(1) Criminal Code. He was placed on probation for a period of 6 months as to each count.
- (2) On September 14, 1992, in the United States District Court, Northern District of New York, the applicant was convicted of the misdemeanor offense of "willfully and knowingly enter the United State at a time or place other than as designated by Immigration Officers and eluded examination or inspection by a United States Immigration Officer," in violation of 8 U.S.C. § 1325. He was sentenced to serve 30 days in jail. The applicant was subsequently removed from the United States to El Salvador on October 28, 1992, based on a final order of deportation of the immigration judge.

On appeal, counsel indicates that the FBI results are confusing because they appear to pertain to both the applicant and to a female; counsel asserts that there is no record of any arrests or convictions against the applicant.

The case will be remanded so that the director may render a full adjudication of the application under the correct immigration file. The director may request any additional evidence that she considers pertinent. Similarly, the applicant may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.