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

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FILE:



OFFICE: Vermont Service Center

DATE: MAR 31 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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

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 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 denied the application because he found that the applicant had failed to submit requested court documentation relating to his criminal record. The director also determined that the applicant had failed to establish his continuous residence and continuous physical presence in the United States during the requisite time periods.

On appeal, the applicant asserts his eligibility for TPS and submits evidence in support of his 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 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 the following offenses:

- (1) On November 5, 1995, the applicant was arrested for Driving While Intoxicated by the Village Police Department in Amityville, New York. He was subsequently charged with Oper MV Impaired by Alcohol; and,
- (2) On November 29, 1997, the applicant was arrested for Driving While Intoxicated by the Suffolk County Police Department in Yaphank, New York. The applicant used the name of Mr. [REDACTED] and he was subsequently charged with Oper MV While Intoxicated 1st.

Pursuant to a letter dated May 19, 2003, the applicant was requested to submit the final court disposition for each of the charges detailed above. In addition, if convicted, the applicant was also requested to provide evidence showing whether the charge for each arrest was classified as a felony or misdemeanor. The applicant was also requested to submit evidence to establish his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001, to the date of filing his application. In response, the applicant submitted some evidence in an attempt to establish his continuous residence and continuous physical presence in the United States. The applicant also submitted a certified letter dated July 31, 2003, from the Police Department of Suffolk County, New York, reflecting that the applicant was charged with the following offenses:

- (3) On June 16, 2003, the applicant was charged with Aggravated Unlicensed Operator 3rd; and,
- (4) On June 16, 2003, the applicant was charged with Multiple Vehicle & Traffic Violations Warrant.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on February 6, 2004.

On appeal, the applicant states that he had previously submitted a police record from the Suffolk County Police Department and an employment letter. He also states that he is married to a TPS registrant, Ms. [REDACTED]. The applicant also submits, on appeal, the following documentation: an unsigned letter dated February 24, 2004, from Mr. [REDACTED] Secretary of Leber Construction Corporation in West Islip, New York, who stated that the applicant has been employed by his company since October 14, 2002; copies of his IRS Form W-2, Wage and Tax Statements, for the years 2001, 2002, and 2003; and copies of his IRS Form 1040 for the tax year 2002.

The applicant has failed to provide any evidence relating to the final court dispositions of his charges detailed in Nos. 1 and 2 above. The letter dated July 31, 2002, clearly states that it is a local name check of only the files of the Suffolk County Police Department. It is noted that the applicant used another name in relation to his arrest as detailed in No. 2 above. In addition, it is also noted that the letter from the Suffolk County Police Department reveals two new additional charges against the applicant as detailed in Nos. 3 and 4 above. The letter does not provide the final court disposition as well for these new charges. Consequently, the director's decision to deny the application for TPS on these grounds will be affirmed.

The other issue in this proceeding is whether the applicant has established his qualifying continuous residence and continuous physical presence in the United States. The employment letter from [REDACTED] is not signed, nor is it in affidavit form; and thus, it has little, if any, evidentiary weight or probative value. The letter does

not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, Mr. [REDACTED] does not provide the address where the applicant resided during the period of his employment. It is further noted that the information post-dates the requisite time period for El Salvador TPS. In addition, the tax documents may indicate that the applicant was in the United States during the year 2001. However, these documents do not provide the actual dates of employment. The burden is on the applicant to establish his continuous residence since February 13, 2001. The applicant claims to have lived in the United States since September 15, 1994. 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. 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 also be affirmed.

The applicant is also ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application relating to his criminal record. 8 C.F.R. § 244.9(a).

It is also noted that another record, [REDACTED] relating to the applicant's removal proceedings, was created on February 8, 1995.

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.