



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: OCT 06 2005

[EAC 01 234 56579]

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:

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 (AAO) on appeal. The appeal will be dismissed.

The applicant is a 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 that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant had failed to submit final court dispositions regarding his criminal history.

On appeal, counsel for the applicant submits a brief and additional documentation.

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 except as provided 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 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 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. Subsequent extensions of the TPS designation have been granted, with the latest granted until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he 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 burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The applicant filed his initial Form I-821, Application for Temporary Protected Status, on July 23, 2001. In support of his initial application, the applicant submitted photocopies of pages from his El Salvadoran passport.

In connection with his application, the applicant was required to appear for fingerprinting. The applicant failed to respond as requested and the director denied the application due to abandonment on May 29, 2002. The applicant subsequently submitted a motion to reopen the proceedings. The director reopened the proceedings and re-requested the applicant to appear for fingerprinting on August 1, 2003. The applicant appeared as requested.

As a result of being fingerprinted, CIS received a report indicating that the applicant had been arrested for the following offenses: on March 7, 1999 for one charge of "DWT" and one charge of "CDS;" on July 4, 2000, for one charge of "Assault Sec Degree 27 12A;" and, on November 6, 2001, for one charge of "Grand Larceny."

On September 15, 2003, the director requested the applicant to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also requested the applicant to submit evidence of the final court dispositions of his arrests, and if, convicted, the classification of the conviction(s). In response, the applicant submitted documentation indicating that the charge of [REDACTED] had been reduced to [REDACTED] for which he was convicted on February 13, 2002. The applicant stated that he was attempting to obtain the final dispositions of his other arrests.

The director determined that the applicant had failed to submit sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The director also determined that the applicant had failed to provide the final dispositions of his arrests, and, if convicted, the classification of the convictions. The director denied the application on January 21, 2004.

On appeal, counsel submits documentation indicating that, with regard to the applicant's arrest on July 4, 2000, determinations of *nolle prosequi* were made by the States Attorney on one charge of "Assault - Sec Degree," one charge of "Disturb the Peace," and one charge of "Resisting Arrest." With regard to the applicant's arrest on March 7, 1999, determinations of *nolle prosequi* were made by the States Attorney on one charge of "CDS: Possession-Marijuana," and one charge of "CDS: Poss Paraphernalia." Counsel also submitted the following documentation regarding the applicant's residence and physical presence in the United States:

1. Photocopies of receipts issued to the applicant, dated March 12, 2001, and July 22, 2001;
2. Photocopies of the applicant's 2000 Internal Revenue Service (IRS) Forms W-2, Wage and Tax Statements;
3. A photocopy of the applicant's 1999 IRS Form W-2;
4. A photocopy of a medical prescription, dated July 22, 2001
5. Photocopies of Western Union money transfer receipts issued to the applicant, dated June 2, 2001; July 25, 2001; and, September 4, 2001; and,
6. Photocopies of the applicant's earnings statements for the pay periods dated August 17, 2000; September 28, 2000; October 5, 2000; October 12, 2000; February 22, 2001; February 28, 2001; April 20, 2002; April 27, 2002; May 11, 2002; June 1, 2002; July 13, 2002; August 3, 2002; April 6, 2003; and, January 12, 2003.

The applicant claims to have lived in the United States continuously since January 14, 1997, to the date of filing his TPS application on July 23, 2001. It is reasonable to assume that he would have a variety of objective contemporaneous evidence to support this claim.

The documentation submitted indicates that the applicant was physically present in the United States during unspecified dates in 1999; from August 2000 to October 12, 2000; from February 22, 2001 to September 2001; from April to August 2002; and, from April to January 2003.

It is concluded that the applicant has not submitted sufficient credible evidence to establish his qualifying continuous residence in the United States since February 13, 2001, and continuous physical presence since March 9, 2001. Furthermore, the applicant has failed to establish the classification of the conviction for his "Petty Larceny" offense. Consequently, the director's decision to deny the application for Temporary Protected Status will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.