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FILE: [REDACTED] OFFICE: Vermont Service Center DATE: OCT 31 2005
[EAC 02 098 51467]

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.

Cindy N. Gomez for

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 the applicant failed to submit requested court documentation relating to her criminal record. The director also denied the application because the applicant failed to respond to a request for evidence to establish her continuous residence and continuous physical presence in the United States during the requisite periods. Therefore, the director determined that the grounds of denial had not been overcome.

On appeal, counsel, on behalf of the applicant, asserts the applicant's eligibility for TPS and submits evidence in support of her 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.

The record reveals the following offenses:

- (1) On April 2, 2000, the applicant was arrested for Driving Under the Influence of Alcohol; and,
- (2) On August 21, 2000, the applicant was arrested for CON321069 (Contempt of Court).

Pursuant to a letter dated June 27, 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 her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States from March 9, 2001, to the date of filing her application. On August 14, 2003, the director denied the application because he determined the record did not contain a response from the applicant, and thus, the grounds for denial had not been overcome.

On appeal, counsel, on behalf of the applicant, states that the applicant had attempted to comply with the director's June 27, 2003 request; however, the applicant failed to provide a copy of the director's request notice along with her response. Thus, counsel believes that is the reason the record does not contain a timely response from the applicant. Further, counsel states that the applicant was convicted of only one misdemeanor, and she had submitted ample evidence to establish her continuous residence as of February 13, 2001, and her continuous physical presence since March 9, 2001, to the date of filing of her application.

Along with her appeal, counsel provides the following documentation: true test copies of the Warrant of Arrest and the final disposition regarding the applicant's arrest for Driving Under the Influence of Alcohol on April 2, 2000; copies of the case details from Virginia Courts Case Information system; a letter dated July 7, 2003, from [REDACTED] Deputy Clerk of the Virginia General District Court, regarding the disposition of the applicant's conviction for "CAPIAS/ASAP NON COMP/SERVED" on October 24, 2000; an affidavit dated September 5, 2003, from [REDACTED] who states that he has known the applicant since February 1999; an affidavit dated September 5, 2003, from the applicant's sister, [REDACTED] who stated that the applicant arrived in the United States in 1992, and that they have not been separated for more than a day since that time; and, an affidavit dated September 5, 2003, from [REDACTED] who stated that he has known the applicant since February 1998.

A review of the final disposition regarding the applicant's arrest reflects that the applicant was convicted of Driving Under the Influence of Alcohol, a misdemeanor. In addition, a review of the letter dated July 7, 2003, from [REDACTED] states that the applicant was charged and convicted for "CAPIAS/ASAP NON COMP/SERVED" (failure to appear) on October 24, 2000, with a maximum possible sentence of sixty days. Consequently, for immigration purposes, these offenses are considered "misdemeanors" as defined by 8 C.F.R. § 244.1. The applicant is not eligible for temporary protected status because she has been convicted of two misdemeanors committed in the United States. 8 C.F.R. § 244.4(a). Therefore, the director's decision to deny the application for TPS on this ground is affirmed.

The second issue in this proceeding is whether the applicant has established her continuous residence in the United States as of February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application.

The statements provided by the affiants regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no corroborative evidence has been provided to cover the requisite time periods for Salvadoran TPS. Affidavits from acquaintances are not, by themselves, persuasive evidence of continuous residence or continuous physical presence during the qualifying requisite time periods. It is also noted that the applicant's sister, [REDACTED] stated in her affidavit that the applicant arrived the United States in 1992, and that they have not been separated since that time. However, the applicant claimed under penalty of perjury on her initial applications for temporary protected status that she did not arrive the United States until November 26, 1996, almost four years later. In addition, it is noted that the applicant claimed on her re-registration TPS application that she did not enter the United States until 1998. Thus, the credibility of Ms. [REDACTED] statements is questionable. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to

explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies as noted above.

Notwithstanding the information regarding her arrests and the affidavits discussed above, the record of proceedings lacks any other corroborative evidence to support the applicant's continuous residence since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. 8 C.F.R. § 244.9(b). The applicant has not submitted sufficient credible evidence to establish her continuous residence in the United States since February 13, 2001, and her continuous physical presence in the United States since March 9, 2001, to the date of filing her application. The applicant has, therefore, failed to establish that she has met the criteria 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.

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.