

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



MI

FILE: [REDACTED]  
[WAC 03 054 51305]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **SEP 16 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: 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

**DISCUSSION:** The application was denied by the Director, California Service Center, and 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: (1) evidence to establish that he was eligible for late initial registration; (2) evidence to establish that he had continuously resided in the United States since February 13, 2001, and has been continuously physically present since March 9, 2001; (3) the final court disposition of any and all arrests.

On appeal, the applicant submits a statement and additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status 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 8 C.F.R. § 244.4; and
- (f)
  - (1) Registers for TPS 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 condition described in paragraph (f)(2) of this section.

The term *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.

The term *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.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present 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. A subsequent extension of the TPS designation has been granted by the Department of Homeland Security, with validity until September 9, 2006, upon the applicant's re-registration during the requisite time period.

The initial registration period for El Salvadorans was from March 9, 2001, through September 9, 2002. The record shows that the applicant filed his initial application on November 12, 2002.

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

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above).

On April 12, 2004, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The director determined that the applicant had failed to respond to his request for additional evidence and denied the application on May 20, 2004.

On appeal, the applicant asserts that he arrived in the United States on November 22, 1992, and that he has a pending Form I-589, Application for Asylum and for Withholding of Deportation. To support his claim, the applicant submits a copy of Form I-589, filed by his mother on May 1, 1995, in which the applicant was included

as her unmarried child under age 21. The record shows that the applicant was issued employment authorization, pursuant to 8 C.F.R. § 274a.12(c)(8), on September 9, 1995, on September 3, 1996, on September 10, 1997, on November 8, 1999, and on December 29, 2000.

Section 101(b)(1) of the Act defines the term “child” to mean an unmarried person under 21 years of age. The record shows that the applicant turned 21 years old on August 1, 1998; therefore, he was no longer eligible for asylum under the principal alien (his mother) as of this date. The applicant, in this case, had no pending asylum application during the initial registration period for TPS from March 9, 2001, through September 9, 2002.

The applicant has failed to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the TPS application on this ground will be affirmed.

The second issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on April 12, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The director determined that the applicant had failed to respond to his request for additional evidence and denied the application on May 20, 2004.

On appeal, the applicant asserts that he has been physically present in the United States since the time of his arrival on November 22, 1992, and that he has not left the United States since that date. He submits copies of school records dated 1995 to 1999; annual application for employment authorization (Form I-765) from 1995 through 2001; copies of employment authorization cards valid from May 22, 1995 through December 28, 2001; a copy of a California driver's license issued on May 9, 2002; and court documents for arrests on July 28, 2001 and on January 14, 2002, and that he was present in court during court proceedings through November 15, 2002.

Based on evidence contained in the record, it is concluded that the applicant has submitted sufficient evidence to establish that he has met the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Therefore, the applicant has overcome this finding of the director.

The final issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors committed in the United States.

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.

On April 12, 2004, the applicant was requested to submit final court dispositions of any and all arrests. The director determined that the applicant had failed to respond to his request for additional evidence and denied the application on May 20, 2004.

On appeal, the applicant submits court records revealing the following offenses:

- (1) On August 10, 2001, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date July 28, 2001), the applicant was indicted for Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On August 20, 2001, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to pay \$1,089 in fines and costs, enroll and successfully complete a 3-month first offender alcohol and other drug education and counseling program, and his driving was restricted for 90 days. Count 1 was dismissed.
- (2) On March 11, 2002, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date January 14, 2002), the applicant was indicted for Count 1, driving while license was suspended or revoked, 14601.5(a) VC, a misdemeanor; and Count 2, no proof of car insurance, 16028(a) VC, an infraction. On April 22, 2002, the court amended the complaint by adding the misdemeanor offense of 12500(a) VC, unlicensed driver, as Count 3. The applicant was subsequently convicted of Count 3. He was placed on probation for a period of 24 months, and ordered to pay \$882 in fines and costs. Counts 1 and 2 were dismissed.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application 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.