

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

M1

PUBLIC COPY



FILE:



OFFICE: VERMONT SERVICE CENTER

DATE: DEC 18 2007

[EAC 02 246 52345]

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, Chief
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 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 she 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 in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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 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.

The Federal Bureau of Investigation (FBI) fingerprint results record reveals the following offenses:

On October 30, 2002, the applicant was arrested by the Fairfax County Police, Fairfax, Virginia, and was charged with "Charge 1-Obstructing Justice," [REDACTED] a Misdemeanor under section 18.2-460.

Pursuant to letters dated October 16, 2003 and April 26, 2004, the applicant was requested to submit the final court disposition for the charge(s) detailed above, and any other charges brought against him, and, in the event of any conviction, evidence such as the statute or sentencing guide, indicating whether the conviction(s) were felonies or misdemeanors. The applicant was also requested to provide evidence establishing his continuous residence and his continuous physical presence in the United States during the requisite periods. The applicant did not respond to either request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on November 9, 2004.

On appeal, the applicant states that he has proof of his residence in the United States "from March 22-2001 to present." In support of the appeal, the applicant submits photocopies of the following documentation:

1. A Commonwealth of Virginia, Official Receipt, Fairfax County General District Court, Traffic, dated July 26, 2004, indicating a cash payment of \$774.22, and denoting:
"Description 1: TRY: 01/23/03 CHG: DWI, 1st
2: OFF: 10/30/02 OL#: [REDACTED]
3. CODE SECTION: A.18.8-866;"
2. Another Commonwealth of Virginia, Official Receipt, Fairfax County General District Court, Traffic, dated December 4, 2002, indicating a cash payment of \$479.00, and denoting:
"Description 1: TRY: 11/18/02 CHG: DWI, 1st
2: OFF: 09/16/02 OL#: [REDACTED]
3. CODE SECTION: A.18.8-866;"
3. Another Commonwealth of Virginia, Official Receipt, Fairfax County General District Court, Traffic, dated December 1, 2004, indicating a payment of \$410.04, and denoting:
"Description 1: TRY: 04/07/03 CHG: DRIV AFTER FORFEITURE LIC. 1st
2: OFF: 03/02/03 OL#: [REDACTED]
3. CODE SECTION: A.18.2-272;"
4. A Commonwealth of Virginia, Commission on The Virginia Alcohol Safety Action Programs (VASAP), Certificate of Completion, DMV Approved Driver Improvement Program, dated November 13, 2004;
5. A letter dated January 23, 2004, from the Probation Counselor, Fairfax County Alcohol Safety Action Program, Fairfax, Virginia, indicating that the defendant's case "t66-18-7312" was being closed for having completed all requirements for participation in the program;
6. A letter dated May 13, 2004, from the Class Group Leader, Fairfax County Alcohol Safety Action Program, Fairfax, Virginia, indicating that the applicant completed a safety class from November 7, 2002 to February 13, 2003;
7. A form entitled, Commonwealth of Virginia, "Acknowledgement of Suspension or Revocation of Driver's License" that has not been completed; and,
8. An American Airlines boarding pass and receipt for travel between Los Angeles, California, and Washington, D.C., on March 22, 2001, in the name of "Jose Fuentes."

The applicant has failed to provide any evidence revealing the final court disposition of his arrest for the charge of "Obstructing Justice," detailed above. In addition, the applicant submitted evidence that appears to indicate he may have additional charges that could affect his eligibility for TPS. The applicant is 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 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 October 16, 2003 and April 26, 2004, to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant failed to respond to these requests.

The director determined that the applicant had failed to submit sufficient evidence to establish his eligibility for TPS and denied the application on November 9, 2004.

On appeal, the applicant reasserts his claim and submits the documentation identified above.

The airline boarding pass and receipt are in the name of [REDACTED] there is no evidence linking the use of this name to the applicant. The applicant has not submitted sufficient evidence to establish his qualifying continuous residence in the United States since February 13, 2001, or his continuous physical presence in the United States since March 9, 2001. He has, therefore, failed to establish that he 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.

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.