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U.S. Citizenship
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[REDACTED]

FILE:

[REDACTED]
[EAC 01 172 54280]

OFFICE: Vermont Service Center

DATE: JUL 19 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied, reopened, and denied again 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 the applicant had failed to provide the court dispositions of the charges relating to his criminal record.

On appeal, the applicant submits a letter and additional documentation.

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 Federal Bureau of Investigation fingerprint results report reveals that the applicant was arrested in Los Angeles on August 22, 1990, for Murder. The results also indicate that the applicant was charged with the following offenses by the Superior Court of Los Angeles:

- (1) “PC- Gross Vehicular Manslaughter While Intoxicated” (Section 191.5(a));
- (2) “VC – DUI Alcohol Drugs Cause Bodily Inj” (Section 23153 A); and,
- (3) “VC – DUI 08 Alcohol Cause Bodily Inj” (Section 23152 B).

The record reveals that on September 15, 2001, the applicant was requested to appear for his fingerprint appointment. On June 20, 2002, the director denied the application due to abandonment, because he determined that the applicant failed to appear for his fingerprint appointment. The applicant filed a motion to reopen the application on July 1, 2002. The director approved the motion to reopen, and on September 29, 2003, the director requested the applicant to provide the final disposition of every charge against him as well as evidence showing whether each charge was classified as a felony or misdemeanor. In addition, the director requested the applicant to provide evidence 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, to the date of filing his application. In response, the applicant provided the following documentation:

1. A copy of a deposit receipt dated May 1, 2002, from the Montgomery County Teachers Federal Credit Union;
2. A letter from [REDACTED], who stated that the applicant had been living with her since 1998 and that they have a son together;
3. A copy of a rental agreement signed by [REDACTED] on March 22, 2002;
4. A copy of an Internal Revenue Service (IRS) notice dated July 29, 2003;
5. A copy of his Personal Income Tax Computation Notices from the State of Maryland for the years 2001 and 2002;
6. A copy of his 2001 Tax Statement from the IRS;
7. Copies of his U.S. Individual Income Tax Return and State of Maryland Income Tax Returns for the year 2001;
8. Copies of his IRS Form W-2, Wage and Income Tax Statements, for the year 2001;
9. Copies of receipt notices dated April 9, 2001, May 9, 2001, and August 20, 2001, for his TPS and employment authorization applications; and,
10. A copy of his Social Security Statement dated May 29, 2002.

On March 28, 2005, the director denied the application again because the applicant failed to provide the requested court documentation with regards to his past arrests and convictions. The director noted in his decision that the record indicated that the applicant was convicted of Gross Vehicular Manslaughter While Intoxicated by the Superior Court of Los Angeles. In addition, the director indicated that the applicant had established his qualifying continuous residence and continuous physical presence in the United States.

On appeal, the applicant states that he did not provide the requested court documentation because he needed to travel to California in order to obtain the necessary documentation. The applicant, on appeal, provides the following:

11. True test copies of the court disposition from the Superior Court of California, County of Los Angeles, dated April 19, 2005, reflecting that the applicant pleaded guilty to Gross Vehicular Manslaughter While Intoxicated (Section 191.5A) on October 17, 1990; and,
12. A true test copy of the sentencing document from the Superior Court of California, County of Los Angeles, dated April 19, 2005, reflecting that the applicant was convicted of Gross Vehicular Manslaughter While Intoxicated (Section 191.5A) and sentenced to 330 days in jail on November 2, 1990.

The applicant is not eligible for temporary protected status because he has been convicted of a felony in the United States. 8 C.F.R. § 244.4(a). Therefore, the applicant remains ineligible for TPS.

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. Subsequent extensions of the TPS designation have been granted by the Secretary of the Department of Homeland Security, with validity until September 9, 2007, upon the applicant's re-registration during the requisite time period.

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).

It is also noted that the director erred in his decision that the applicant had established continuous residence and continuous presence during the requisite time periods. The lease agreement, as detailed in No. 3 above, does not reflect the applicant's name. In addition, the documents detailed in Nos. 1, 4, and 9, post-date the beginning of the qualifying periods for El Salvador TPS. The tax documents detailed in Nos. 5, 6, 7, 8, and 10, indicate that the applicant was in the United States during the year 2001; however, they do not provide the actual dates of employment. The burden is on the applicant to establish his residence since February 13, 2001, and his physical presence since March 9, 2001. In addition, the statements provided by [REDACTED] in No. 2, regarding the applicant's claimed continuous residence and continuous physical presence in the United States are not supported by corroborative evidence covering the beginning of the requisite timeframes. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence and physical presence. The applicant has not provided sufficient evidence to establish his qualifying continuous physical presence and continuous residence during the requisite time periods. 8 C.F.R. § 244.2(b) and (c). Therefore, the application must also be denied for these reasons.

It is also noted that the Federal Bureau of Investigation fingerprint results report reveals that the applicant is subject to an outstanding warrant enter by the Sheriff's Office of Norwalk, California on October 29, 1993.

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.