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U.S. Citizenship
and Immigration
Services

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FILE:

[SRC 02 030 57087]

OFFICE: Vermont Service Center

DATE:

JUL 19 2007

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:

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 (VSC). It is now on appeal before the Administrative Appeals Office (AAO). 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 on the grounds that the applicant failed to establish his continuous physical presence in the United States from March 9, 2001, to the date of filing, and had been convicted of two or more misdemeanors in the United States, thereby making him ineligible for TPS under the Act.

On appeal, counsel asserts that the applicant has resided in the United States since before February 14, 2001, and that he has only been convicted of traffic offenses, not misdemeanors. Additional documentation is submitted in support of these claims.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002.

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.

El Salvadoran nationals applying for TPS must demonstrate continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002.

An alien shall not be eligible for TPS 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” as follows:

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.

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). *See* 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 the burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *See* 8 C.F.R. § 244.9(b).

The record shows that the applicant – who claims to have entered the United States on March 5, 1999 – filed his initial Form I-821, Application for Temporary Protected Status, on September 20, 2001. On September 1, 2004, the director sent the applicant a notice of intent to deny (NOID), in which the applicant was requested to submit certified final court dispositions for all charges appearing on his criminal record, including evidence of whether any conviction was classified as a felony or a misdemeanor, as well as documentation showing that he was physically present in the United States from March 9, 2001, to the date his TPS application was filed (September 20, 2001). In response the applicant submitted photocopies of: a series of Uniform Traffic Tickets and Citation Inquiries; a document from the Town of Williamston (South Carolina) Police Department, dated September 10, 2004, listing six criminal charges against the applicant with guilty findings and the notation that “All above charges were misdemeanors;” a Best Buy invoice dated September 4, 2004; a Capital One personal loan statement dated August 28, 2004; a letter from Merchants Metals in Bladensburg, Maryland, stating that the applicant had been employed by the company since July 12, 2002; an Employment Authorization Card issued to the applicant with a validity period of September 16, 2003 – March 9, 2005; and an auto insurance cancellation notice dated November 20, 2000. The applicant had also previously submitted photocopies of: a bill dated in January 2001; his birth certificate; his El Salvadoran passport issued by the Consulate General in Washington, D.C., on March 7, 2002; and character references.

On January 14, 2005, the director denied the application for TPS on the grounds that (1) the applicant failed to establish that he had been continuously physically present in the United States from March 9, 2001, to the date of filing, and (2) the applicant had been convicted of two or more misdemeanors committed in the United States, which rendered him ineligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

The applicant filed a timely appeal, and submitted additional documentation pertaining to his physical presence in the United States and his conviction record. The evidence submitted on appeal includes photocopies of:

- A certified copy from the Williamston Police Department of the applicant’s “Motor Vehicle Record History” listing two charges on January 1, 2001, three charges on March 12, 2001, and one charge on March 8, 2002, and fines levied for each.
- Fee receipts from the South Carolina Department of Motor Vehicles, dated August 12, 2005.
- A certified copy from the South Carolina Department of Motor Vehicles of the applicant’s “Official 10 Year Driver Record,” dated August 12, 2005.
- A payment receipt from the Williamston Police Department for the ticket issued on March 8, 2002.
- A document from the Williamston Police Department, dated September 13, 2004, confirming that all of the charges against the applicant were misdemeanor charges and have been paid in full.
- A receipt from Urgente Express, an international courier, issued to the applicant on August 26, 2000.
- A 30-day extension of the applicant’s auto insurance policy, dated October 23, 2000.
- A certificate of vehicle title issued to the applicant by Toyota on October 7, 2002.
- A Toyota Financial Services invoice to the applicant, dated October 23, 2002.
- An “Odometer Disclosure Statement” issued to the applicant on September 8, 2002.
- An “Auto Billing Statement” issued to the applicant on November 20, 2000.
- A South Carolina “Motor Vehicle Property Tax and Registration Renewal Notice” issued to the applicant on September 7, 2001.
- A South Carolina excise tax return of the applicant for an auto purchased on October 23, 2000.
- Money transfer receipts issued to the applicant on August 5, 10, and 26, 2001.
- A Radio Shack receipt issued to the applicant on April 18, 2002.

The documentation submitted on appeal, together with the evidence submitted earlier in this proceeding, is sufficient to establish the applicant's continuous physical presence in the United States from March 9, 2001, to the date of filing (as well as the applicant's continuous residence in the United States since February 13, 2001), as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b) and (c). Accordingly, the applicant has overcome that ground for denial.

As for the applicant's conviction record, counsel asserts on appeal that the documentation submitted from the Williamston Police Department indicating that fines were paid for each of the applicant's six charges in 2001 and 2002 indicate that no jail time was served and that the applicant was not guilty of multiple misdemeanors. No final court dispositions of the applicant's charges have been submitted, however, as expressly requested in the NOID. Nor has the applicant submitted copies of the relevant statutes, sentencing guidelines, or other evidence indicating whether his convictions are classified as misdemeanors (or felonies). The document from the Williamston Police Department, dated September 13, 2004, confirmed that the applicant was guilty of six charges in 2001 and 2002, and that they were all misdemeanors. In the absence of evidence identifying the statutory violations and the maximum possible punishments upon conviction – including evidence that none of the violations were punishable by more than five days imprisonment, which would remove them from the definition of misdemeanor at 8 C.F.R. § 244.1 – the clear language of the police document shall be given probative weight. Furthermore, the Federal Bureau of Investigation (FBI) fingerprint results report indicates that the applicant's arrest on March 8, 2002 for "Failure to Appear" (two counts) and "Giving False Information" (one count) resulted in convictions on all three counts, with the first two charges carrying 30-day jail terms and the third charge a forfeited bond.

Thus, the evidence of record fails to establish that the applicant has not been convicted of two or more misdemeanors committed in the United States, as required for him to be eligible for TPS under section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Accordingly, the director's denial of the application will be affirmed on that ground.

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 that burden.

ORDER: The appeal is dismissed.