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U.S. Citizenship
and Immigration
Services

NAI

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JUL 30 2007

[EAC 01 157 50486]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont 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 requested court documentation relating to his criminal record.

On appeal, the applicant submits 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.

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. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until September 9, 2007, upon the applicant's re-registration during the requisite time period.

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible. Section 212(a)(6)(C)(i) of the Act.

The record reveals that the applicant filed his initial application on March 22, 2001. The director originally denied the application on March 19, 2003, after determining that the applicant had abandoned his application by failing to respond to a request to submit evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001, to the date of filing the application. The applicant appealed the director's decision on October 18, 2003, and submitted a Transcript of Driver History Record issued by the Virginia Department of Motor Vehicles. The director reopened the case and on November 12, 2004, and again on January 12, 2005, the applicant: (1) was requested to submit the final court disposition of every charge against him, including his arrest on November 28, 2003, for petit larceny that was listed on the Federal Bureau of Investigation (FBI) fingerprint results report; and (2) was advised that CIS records show that on March 9, 1993, he was found inadmissible to the United States, pursuant to section 212(a)(6)(C) of the Act, for fraud/misrepresentation and/or falsely claiming United States citizenship. The applicant was requested to file an Application for Waiver of Ground of Excludability (Form I-601). Because the applicant failed to respond, the director again denied the application on March 30, 2005. The applicant appealed the director's decision on May 2, 2005, and submitted the arrest record for his November 28, 2003 arrest.

It should be noted, at this point, that a review of the applicant's records, including file [REDACTED], indicates that on May 9, 1993, the applicant arrived at the Dulles International Airport and presented an El Salvadoran passport with a B1/B2 nonimmigrant visitor's visa. He stated to the inspecting officer that he was coming to the United States to "take technical courses." The applicant, however, was not in possession of an M-1 nonimmigrant student visa; therefore, he was given a choice in returning to El Salvador to obtain the required visa or to appear before an Immigration Judge (IJ). The applicant withdrew his application for admission in lieu of a hearing before an IJ, and he was scheduled to depart to El Salvador on a return flight on May 10, 1993. The applicant failed to show up for the departure flight. The record in this case, however, is insufficient to establish that fraud existed and that the applicant was inadmissible to the United States, pursuant to section 212(a)(6)(C) of the Act, as determined by the director. Therefore, this finding of the director will be withdrawn.

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.

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 record reveals the following offenses:

- (1) The FBI report shows that on November 28, 2003, the applicant was arrested for petit larceny. On appeal, the applicant submits the Fairfax County Police Department arrest record indicating that the disposition of this arrest was not known. The applicant, however, failed to submit the final disposition from the court where this case was heard.
- (2) The records of the Department of Homeland Security (DHS) database shows that on May 25, 2004, in Alexandria, Virginia, the applicant was arrested for assault and battery-family member. The database shows that the applicant was convicted of this offense on June 23, 2004; however, the actual final court disposition is not contained in the record although the applicant was requested to submit the final court disposition of all arrests.
- (3) The records of the DHS database shows that on March 5, 2005, in Fairfax, Virginia, the applicant was arrested for obstructing justice. The final court disposition of this offense is not contained in the record although the applicant was requested to submit the final court disposition of all arrests.

The applicant has failed to provide the final court dispositions of his arrests detailed in Nos. 1, 2, and 3 above. 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).

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.