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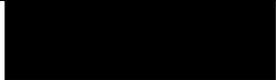
U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: Vermont Service Center

DATE: **JUN 14 2007**

[EAC 02 092 50326]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), reopened on the applicant's motion, and denied again by the VSC Director. The matter 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 provide sufficient evidence to establish her continuous physical presence in the United States from March 9, 2001, to the date of filing, and did not submit a certified court disposition for all of her criminal charges and convictions.

On appeal, the applicant asserts that she qualifies for TPS and submits some 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.

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. 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.

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 in October 1999 – filed her initial Form I-821, Application for Temporary Protected Status, on January 17, 2002. On April 9, 2003, the director sent the applicant a notice of intent to deny, in which the applicant was requested to submit the final disposition of an arrest by the Fredericksburg (Virginia) Police Department on a charge of “concealment, price alter merchandise” under \$200 in value, as well as documentation showing that she resided in the United States as of February 13, 2001, and that she was physically present in the United States from March 9, 2001, to the date her TPS application was filed (January 17, 2002). After the applicant failed to respond within the requisite 30 days, the director denied the application on the ground of abandonment on June 2, 2003.

The applicant filed a “Motion to Reconsider/Reopen” on April 5, 2004, accompanied by some photocopied earnings statements from Welburn Management Consulting of Berwyn, Pennsylvania, identifying the applicant as the employee, for pay periods in February and March 2001, in January 2002, and in December 2002; photocopies of the applicant’s birth certificate and her passport issued by the El Salvadoran Consulate General in Washington,

D.C. on November 22, 1999; and a change of address form dated June 19, 2003. Though the applicant's motion was not filed within the 33-day period specified in the regulations, the director granted it as meeting the requirements of 8 C.F.R. § 103.5 before denying the TPS application, in a decision issued July 14, 2004, on the grounds that the evidence submitted with the motion failed to establish the applicant's continuous physical presence in the United States from March 9, 2001, to the date of filing, and did not include a certified court disposition of the applicant's criminal charge(s) and conviction(s).

The applicant filed a timely appeal, supplemented by a sworn statement, additional earnings statements from Welburn Management Consulting, and a "Virginia Uniform Summons" from the Fredericksburg Police Department containing a stamp of the Fredericksburg General District Court. The latter document confirms that the applicant was arrested for shoplifting (Virginia Code section 18.2-103 – a misdemeanor offense) at a CVS Pharmacy on June 30, 2000, was convicted on September 7, 2000, and was sentenced to a \$100 fine and 10 days in jail, all of which were suspended on condition of good behavior for two years. The police department summons includes an authentication stamp and the signature of the Clerk of the Fredericksburg General District Court, dated August 4, 2004, which states as follows:

I certify that the document to which this authentication is affixed is a true copy of a record in the Fredericksburg General District Court, that I have custody of the record, and that I am the custodian of that record.

Based on the foregoing evidence, the AAO concludes that the applicant has been convicted of a single misdemeanor offense in the United States, which does not make her ineligible for TPS under section 244(c)(2)(B)(i) of the Act. Accordingly, the applicant has overcome that ground for denial.

As for the evidence of the applicant's physical presence in the United States, the record includes a photocopy of the applicant's passport that was issued by the El Salvadoran Consulate General in Washington, D.C. on November 22, 1999; the summons by the Fredericksburg Police Department recording the applicant's shoplifting arrest on June 30, 2000, and conviction on September 7, 2000; and the earnings statements dated in February and March 2001, August and September 2001, January 2002, and December 2002. Although the applicant asserts that her earnings were for work she performed at a Ruby Tuesday's restaurant, she has submitted no letter from the company verifying her employment or any other company documentation to confirm her claim of employment. The earnings statements in the record are issued by Welburn Management Consulting with no indication on the forms that they pertain to employment at Ruby Tuesday's. Moreover, the earnings statements contain inconsistent data. Whereas the earnings statements submitted with the motion to reopen include three for the pay periods of February 8-21, 2001, February 22-March 6, 2001, and March 7-20, 2001, the earnings statements submitted with the appeal include two for the pay periods of February 13-26, 2001, and March 5-18, 2001. The dates of the latter two pay periods overlap with, and are not reconcilable with, those of the first three. In addition, the six-day gap between the latter two pay periods is illogical. Furthermore, the year to date earnings recorded on the latter two statements in February and March 2001 are nearly as high as the year to date earnings recorded on the statements for August and September of that year.

It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92, (BIA 1988). No such competent evidence has been submitted by the applicant to reconcile the foregoing inconsistencies in the earnings statements.

The AAO determines that the earnings statements submitted by the applicant are not credible evidence of her employment at Ruby Tuesday's restaurant, or any other company in the United States, during the time periods indicated from February to September 2001, or during the later pay periods in 2002. Absent the earnings statements, there is no evidence of the applicant's physical presence in the United States between September 2000, when she was convicted of shoplifting, and January 2002, when she filed her initial TPS application. The AAO concludes that the applicant has failed to meet her burden of proof that she was continuously physically present in the United States from March 9, 2001, until her date of filing on January 17, 2002, as required for TPS applicants from El Salvador under 8 C.F.R. § 244.2(b). 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.