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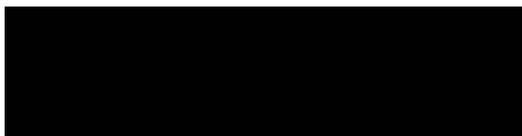
OFFICE: Vermont Service Center

Date: FEB 01 2008

INRE: 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:



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, Vennont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be a 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 failed to establish that he was eligible for late registration. The director also found that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and failed to provide the final court disposition for arrests on his criminal record.

On appeal, the applicant that he is eligible for TPS and that he is submitting evidence which establishes his eligibility.

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 designated by the Attorney General 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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.

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, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed this application on October 2, 2006.

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):

The first issue in this proceeding is whether the applicant is eligible for late registration.

The record of proceedings confirms that the applicant filed his application after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period he fell within at least one of the provisions described in 8 C.F.R. § 244.2(f)(2) above.

On April 23, 2007, the applicant was requested to submit evidence establishing his eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to submit evidence establishing his qualifying continuous residence and continuous physical presence in the United States. The applicant, in response, provided documentation relating to his residence and physical presence in the United States.

The director determined that the applicant had failed to establish he was eligible for late registration and denied the application on July 26, 2007. On appeal, the applicant asserts he is eligible for TPS.

The applicant asserted that he was submitting proof of a pending asylum application **but** no such evidence was included. The record establishes the applicant's asylum application was denied on June 24, 1997, because he was not eligible due to a felony conviction for Grand Theft Auto.

The applicant has not submitted any evidence to establish that he has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's conclusion that the applicant had failed to establish his eligibility for late registration 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, or his continuous physical presence in the United States since March 9, 2001.

As stated above, the applicant was requested on April 23, 2007, to submit evidence establishing his qualifying continuous residence and continuous physical presence in ~~the~~ United States. The applicant did not respond.

The director concluded that the applicant had failed to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods and denied the application.

On appeal, the applicant asks that CIS approve his application.

The applicant has submitted tax documentation for the years 2000 – 2004.

The tax returns submitted by the applicant are not certified, there is no indication that they are authentic or filed contemporaneously with the dates listed.

The applicant **has** not submitted sufficient credible evidence to establish his qualifying continuous residence or continuous physical presence in the United States during the required periods. 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 final issue in this matter is the applicant's failure to provide the final court disposition of an arrest listed on his criminal record. 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).

The record reveals the following offenses:

1. On December 27, 1990, the applicant was arrested for unlicensed driving. The applicant was subsequently convicted of this charge in the Municipal Court of California, County of Los Angeles. (Case No. ● ● ● ●)
2. On January 7, 1992, the applicant was arrested by the Sheriff's Office of Ventura, California, for Possession of Burglary Tools.
3. On January 7, 1992, the applicant was arrested by the Sheriff's Office of Ventura, California, for Carrying a Loaded Firearm.
4. On October 19, 1995, the applicant was arrested by the Glendale Police Department in California for Grand Theft Auto. On November 3, 1995, the applicant was convicted of an amended charge of unlawfully driving or taking a vehicle in violation of section 1Q851(A) VC, a felony. (Case No. [REDACTED])
5. On October 19, 1995, the applicant was arrested by the Glendale Police Department in California for Obstructing/Resisting a Public Officer. This charge was dismissed on November 3, 1995.
6. On September 9, 2000, the applicant was arrested by the Los Angeles Police Department for Receiving Stolen Property.
7. On October 13, 2002, the applicant was arrested by the Los Angeles Police Department for Driving Under the Influence of Drugs or Alcohol.

Pursuant to a letter dated April 23, 2007, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to this director's 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 July 26, 2007.

On appeal, the applicant asserts his record is being expunged and submits two documents.

The documents submitted are not final dispositions, and relate to a previously undisclosed charge of Driving Without a License (number 1 above). The charge at No. 1 above has been expunged under California Code section 1203.4. However, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions which do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999). Therefore, the applicant remains convicted of this offense for immigration purposes. The document submitted for number 5 above indicates that a motion to dismiss the charge was denied.

The applicant failed to reveal his criminal record as required by the Form 1-821, Application for Temporary Protected Status. Statements and documents made on appeal are clearly inadequate to address the director's request for information on the applicant's criminal record, and border on fraudulent misrepresentation.

The applicant is ineligible for TPS due to his record of at least one felony conviction, detailed above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). In addition, the applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed 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). Consequently, the director's decision to deny the application for this reason will 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 TPS 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.