



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

FILE: [REDACTED]
[EAC 07 012 73886]

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:

[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.

John H. Vaughan
for Robert P. Wiemann, Chief
-Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center (VSC), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, who claims to be a national of El Salvador, 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 his eligibility for late registration, his nationality and identity, that he had continuously resided in the United States since February 13, 2001, and that he had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to provide documentation concerning the final court dispositions of all criminal charges against him.

On appeal, counsel for the applicant submits a brief statement and additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign 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 § 244.3;
- (e) Is not ineligible under § 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. The initial registration period for Salvadorans was from March 9, 2001, through September 9, 2002. The applicant filed his initial Form I-821, Application for Temporary Protected Status, on October 10, 2006 - more than four years after the initial registration period had ended.

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.

An alien shall not be eligible for TPS 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.

The burden of proof is upon the applicant to establish that he meets the above requirements. Applicants must 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 burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his own statements, 8 C.F.R. § 244.9(b).

As a result of being fingerprinted in connection with his application, CIS received a report from the Federal Bureau of Investigation (FBI) indicating that the applicant had been arrested and charged with the following offenses in Mineola, New York: (1) on February 10, 1996, of "Petit Larceny," and, (2) on April 1, 1999, of "ASLT 3rd degree."

On February 9, 2007, the director requested the applicant to submit evidence of his qualifying continuous residence and continuous physical presence in the United States during the requisite time periods. The applicant was informed that such evidence may include, but was not limited to, employment or school records, rent/mortgage payment receipts, bank or insurance documents, medical or utility bills, or other similar materials. The applicant was also requested to submit evidence to establish his eligibility for late registration, his identity and nationality, and the final court dispositions for the above arrests, and any other charges against him.

In response, the applicant submitted:

1. Evidence that the charge of Assault, in violation of New York Penal Law § 120.00, was reduced to Harassment, in violation of New York Penal Law § 240.26, for which the applicant pled guilty and was convicted on April 24, 2002, in the District Court of Nassau County - Hempstead, New York.
2. Documentation indicating the applicant's presence in the United States from November 1998 through June 2000; December 2001 through October 2002; and from April 2005 through January 2007.
3. Tax records for the years 2002 through 2006, all stamped received by the Taxpayer Assistance Center in Garden City, New York, on February 22, 2007. The forms can be given little weight, as they are not accompanied by Internal Revenue Service (IRS)

Fonns W-2, Wage and Tax Statements, or certification of filing with the Federal, state, or local government, as required by 8 C.F.R. §244.9(a)(2)(i).

The director determined that the applicant failed to establish that he had continuously resided in the United States since February 13, 2001, and had been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant failed to establish his nationality and identity and his eligibility for late registration. The director further noted that the applicant failed to provide documentation concerning the final court disposition of his February 10, 1996 arrest. Therefore, the director denied the application on May 8, 2007.

On appeal, counsel asserts that the applicant is eligible for late registration because he had a Form I-765, Application for Employment Authorization, pending as of July 19, 2002. In support of the appeal, counsel also submits additional documentation regarding the applicant's residence and physical presence in the United States during the time periods described in No. 2, above, as well as a New York State driver license issued in January 2004.

The applicant claims to have continuously lived in the United States since September 1998. Although the applicant has submitted sufficient documentation to establish his presence in the United States prior to the required dates (November 1998 through June 2000) and from December 2001 through October 2002, and April 2005 through January 2007, he has not submitted any objective documentation covering the eighteen-month period from June 2000 to December 2001, and has provided only one document for the two years of 2004 and 2005 (the driver license of January 2004).

It is concluded that the applicant has failed to submit sufficient evidence to establish that he satisfies the continuous residence and continuous physical presence requirements described in 8 C.F.R. §§ 244.2(b) and (c). Consequently, the director's decision to deny the application on the grounds that the applicant has failed 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, will be affirmed.

The applicant has also failed to provide any evidence that during the initial registration period he qualified for late registration under any of the conditions described in 8 C.F.R. § 244.2(e)(2) above. An application for employment authorization does not constitute "an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal..." under 8 C.F.R. § 244.2(e)(2). While the applicant did have a pending asylum request during the initial registration period, the applicant withdrew it on September 13, 2002. Since the applicant did not file for TPS until four years after his asylum application was terminated - in October 2006 - he did not meet the 60-day deadline prescribed in 8 C.F.R. § 244.2(g) to be eligible for late TPS registration. The applicant has also failed to submit sufficient evidence to establish his nationality and identity, as required under the provisions of 8 C.F.R. § 244.9(a)(1). Consequently, the director's decision to deny the application on these grounds will also be affirmed.

Finally, the applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application, specifically, the final court dispositions of all of the charges against him..

8 c.P.R. § 244.9(a). Consequently, the director's decision to deny the application for Temporary Protected for this reason will also 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 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.