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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

Office: VERMONT SERVICE CENTER

Date: APR 30 2009

[EAC 01 245 51759]

[EAC 03 234 56252 – I-290B]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 determined that the applicant failed to establish he had: 1) continuously resided in the United States since February 13, 2001; and 2) been continuously physically present in the United States since March 9, 2001. The director also determined that the applicant had failed to submit requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, the applicant asserts that her April 3, 1994 case was dismissed. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States.

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 as designated by the Attorney General is eligible for temporary protected status 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 section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS 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 physically present*, as used 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 term *continuously resided*, as used 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.

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. 8 C.F.R. § 244.1.

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) On April 3, 1994, the applicant was arrested by the Suffolk County, New York Police Department for "Criminal Possession of Stolen Property."
- (2) On December 14, 1996, the applicant was arrested by the Suffolk County, New York Police Department for "Driving While Intoxicated." The applicant was subsequently convicted on August 4, 1997 of "Driving While Impaired" NYVTL 1192.1, a misdemeanor.
- (3) On April 15, 1997, the applicant was arrested by the Suffolk County, New York Police Department for "Forgery." The applicant was subsequently convicted on August 4, 1997 of "Forgery 2nd Degree" NY170.05, a misdemeanor.

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 granted until March 9, 2009, upon the applicant's re-registration during the requisite period.

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record shows that the applicant filed his initial TPS application on August 8, 2001.

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 United States Citizenship and Immigration Services (USCIS). 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 record shows that the applicant filed his TPS application on August 8, 2001. On May 14, 2003, the applicant was provided the opportunity to submit evidence establishing continuous residence in the

United States since February 13, 2001, and continuous physical presence in the United States from March 9, 2001, to the filing date of the application. The applicant was also requested to submit the final court disposition for every arrest and/or charge against him. The applicant, in response, provided:

- A. Copies of two disposition reports from Suffolk County Court indicating that the on August 4, 1997, the applicant was convicted of "Forgery" and "Driving While Impaired."
- B. A copy of his Salvadoran passport.
- C. Copies of a bill from I [REDACTED] dated January 18, 1999, and a hand-written bill for a doctor's visit dated January 26, 1999.
- D. Copies of a Final Notice dated March 31, 1999, a Probation Card with dates in 1998 and 1999, a Suffolk County District Court Fine/Fee receipt dated August 2, 2001

The director determined that the applicant failed to submit sufficient evidence to establish his continuous residence and continuous physical presence in the United States during the qualifying period. The director also determined that the applicant failed to provide the final court disposition for the April 3, 1994 arrest. Therefore, the director denied the application.

On appeal, the applicant states that his April 3, 1994 arrest was dismissed and that he sent a document establishing this fact in response to the request for additional evidence. The applicant also submits evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. The applicant requests that his case be reopened and he be granted TPS.

Specifically, the applicant submits a letter from [REDACTED], and a copy of a final disposition for the April 3, 1994 arrests indicating that the charge was dismissed on August 4, 1997.

The passport establishes the applicant's identity and nationality. The final disposition corroborates the applicant's claim that his April 3, 1994 arrest was dismissed. [REDACTED], identified as the General Manager states that the applicant has been employed by Applebee's east Islip location since 1999. However, this statement has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(i). Specifically, the affiant does not provide the address where the applicant resided during the period of his employment. It is further noted that the affiant did not indicate the applicant's duties of employment. The District Court Fine/Fee receipt is dated subsequent to the requisite dates to establish continuous residence and continuous physical presence in the United States during the qualifying period. In contrast all of the remaining evidence provided by the applicant is date prior to the requisite dates for continuous residence and continuous physical presence. Therefore, this documentation is of little or no probative evidence in establishing the applicant's eligibility.

The applicant has not submitted sufficient evidence to establish that he has met the criteria for continuous residence and continuous physical presence described in 8 C.F.R. § 244.2(b) and (c). The applicant did submit the final court disposition for the April 3, 1994 arrest, thereby overcoming this basis for the director's denial of the TPS application. However, the applicant is also ineligible for Temporary Protected Status because of his two misdemeanor convictions detailed at Nos. 2 and 3 above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for Temporary Protected Status 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 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.