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

[SRC 01 254 54661]

Office: VERMONT SERVICE CENTER

Date: JUN 08 2009

IN RE:

Applicant:

APPLICATION:

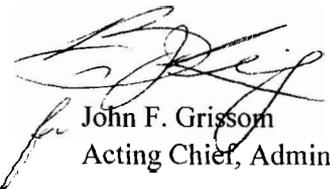
Application for Temporary Protected Status under Section 244 of the Immigration  
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. 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 claims to be 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 been convicted of two or more misdemeanors. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant has submitted sufficient evidence to establish his continuous physical presence in the United States during the qualifying period. Counsel also states that the applicant was not convicted of two or more misdemeanors. In addition, the applicant 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.

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 September 10, 2010, upon the applicant's re-registration during the requisite period.

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.

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 6, 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 6, 2001. On April 27, 2007, 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. In response the applicant submitted the following:

1. Copies of undated PayPal receipts; a utility bill dated December 5, 2007; Time Warner cable bills with due dates of October 14, 2007 and January 8, 2008; payment coupons from ACCC General Agency, Inc. with due dates from January 10, 2007 through May 1, 2007; a Commercial Liability Policy from American Vehicle Insurance Company dated February 21, 2007; Sprint bills dated July 23, 2007 and August 23, 2007; a Final Premium Audit Statement from Texas Mutual for the period from June 13, 2007 to October 23, 2007; an invoice from Texas Mutual dated August 21, 2007; a Premium Finance Agreement from Insurance Service Company dated February 21, 2007; an Amended Certificate from Southeast Surplus Underwriters dated March 25, 2007; a Texas Liability Insurance Card effective on September 12, 2007; a Notice of Intent to Cancel from Insurance Service Company dated November 26, 2007; a sales receipt from S & T Duran Insurance Company dated December 26, 2006; a Title Application Receipt dated December 29, 2006; and an Order Confirmation from Sprint dated September 15, 2005.

2. Copies of Bank of America monthly statements for statement periods from March 24, 2005 through June 23, 2005 to November 1, 2007 through November 30, 2007.
3. Copies of documents from Morales Law Offices dated November 8, 2006, November 20, 2006, and January 9, 2007 and an invoice from San Antonio Immigration Center dated August 11, 2003.
4. Copies of Statements of Earnings dated from May 16, 2003 through March 30, 2007.
5. Copies of a Master Subcontract Agreement dated July 19, 2007; money transfer receipts dated from March 19, 2006 to December 17, 2007; an Affidavit and Release of Lien dated January 31, 2007; a Bill of Sale from E & E Motors dated January 17, 2006; a Purchase Order from Stone's Trailers dated July 6, 2006; a receipt from Southside Wrecker Inc dated October 25, 2006; a receipt from Pep Boys dated September 15, 2006; a Statement of Security Deposit Accounts from the Legacy Apartments dated October 14, 2006; and, a receipt from 12 Oaks Inn dated October 12, 2006.
6. Copies of a letter from Internal Revenue Service (IRS) dated May 28, 2007 and 2004, 2005 and 2006 tax documents including unsigned and unfilled tax returns.
7. Copies of a Texas Department of Public Safety Notification of Sentencing dated November 17, 2006; Texas Financial Responsibility Insurance Certificates dated January 5, 2007; Defendant's Plea of Guilty, Nolo Contendere, Waiver & Stipulation dated June 8, 2007; Travis County Community Service Restitution Program Placement Agreement dated July 13, 2007; receipts from the Travis County Community Supervision and Corrections Department dated August 23, 2007 and September 24, 2007

The record reveals the following offenses:

- (1) On December 28, 2000, the applicant was arrested by the Austin, Texas Police Department for "Failure to Maintain Financial Resp" and No Drivers License." [REDACTED].
- (2) On October 19, 2006, the applicant was arrested by the Austin, Texas Sheriff Department for "Prostitution." [REDACTED].

On January 31, 2008, the applicant was requested to submit the final court disposition for each of the charges described above. The applicant, in response, provided the requested court documents. The final dispositions indicated that on July 5, 2001, the applicant was found guilty of "Failure to Maintain

Financial Resp” and No Drivers License,” and on June 8, 2007, the applicant was found guilty of “Prostitution”, a misdemeanor, with a Deferral of Adjudication of Guilt and Supervision Order issued.

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 found that the applicant is ineligible for TPS because he determined the applicant had misdemeanor convictions. Therefore, the director denied the application.

On appeal, counsel states the applicant has provided sufficient evidence to establish continuous physical presence in the United States. Counsel also states that the applicant had not been convicted of two or more misdemeanors. According to counsel, the July 5, 2001 convictions were for traffic violations punishable only by fines and the applicant received a deferred adjudication of guilt for the “Prostitution” conviction. The applicant also submits evidence in an attempt to establish continuous residence and continuous physical presence in the United States during the qualifying period. Specifically, the applicant submits statements from [REDACTED] and a personal statement from the applicant.

All of the evidence provided by the applicant in response to the April 27, 2007 notice is dated subsequent to the qualifying dates to establish his presence in the United States during the requisite periods. This evidence is therefore of little or no probative value in establishing the applicant’s continuous residence since February 13, 2001 and his continuous physical presence in the United States from March 9, 2001 to the filing date of his TPS application.

[REDACTED] states that she met the applicant in the fall of 1999 and had him do some electrical work around her house and helped with the remodeling of her home in 2002 and her restaurant in 2001. [REDACTED] also states that, to her knowledge, the applicant has been physically present in the United States since the fall of 1999, except for a few trips to El Salvador for which he obtained travel permits. [REDACTED] in a statement signed on August 20, 2008, states that he met the applicant about ten years previously through his mother at a Christmas party and that the applicant has been working and living in the United States since that time. However, these statements have little evidentiary weight or probative value. These statements are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. In addition, Ms. [REDACTED] declaration also lacks evidentiary weight or probative value as a statement of employment, 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. Furthermore, neither [REDACTED] nor [REDACTED] has demonstrated that their knowledge of the applicant's continuous presence in the United States is independent of their personal relationship with the applicant. If this knowledge is based primarily on what the applicant told them about his presence in the United States, then his statement is essentially an extension of the applicant's personal testimony rather than independent corroboration of that testimony. Without corroborative evidence, the affidavits from acquaintances do not substantiate clear and convincing evidence of the applicant's residence in the United States. In his statement, the applicant provides a

history of his presence in the United States. However, the applicant states that he did not retain any documents or other evidence for the years prior to the dates represented by the evidence he presented.

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). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

Counsel submits evidence that the July 5, 2001 convictions were for traffic violations and not misdemeanors and punishable only by a fine. The record does not reflect that the applicant has been convicted of two or more misdemeanors. Therefore, this basis for the denial of the applicant's TPS application is withdrawn.

It is noted that although the applicant has submitted a copy of a birth certificate with English translation, it was not accompanied by a passport or any national identity document from the alien's country of origin bearing photo and/or fingerprint to establish his nationality and identity. Therefore, the application must be denied on this basis as well.

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.