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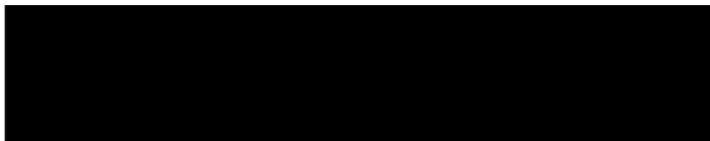
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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

M1



FILE: [REDACTED]  
[EAC 09 065 50755]

Office: VERMONT SERVICE CENTER

Date: **FEB 23 2010**

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 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).

Perry Rhew  
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: 1) had continuously resided in the United States since February 13, 2001; 2) had been continuously physically present in the United States since March 9, 2001; and 3) was eligible for late registration. The director also determined that the applicant failed to submit requested court documentation relating to his criminal record. The director, therefore, denied the application.

On appeal, the applicant states that he had submitted the requested evidence and requests that this documentation be reviewed. The applicant also submits additional evidence in an attempt to establish his eligibility for TPS.

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.

- (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.

*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.

*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.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

The record reveals the following offenses:

- (1) On August 23, 1997, the applicant was arrested by the Hialeah [Florida] Police Department for "Cocaine - Possess."

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 9, 2010, 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 this application on December 29, 2008. The applicant filed his initial TPS application on May 17, 2001. The Director, Vermont Service Center, denied that application on June 3, 2002 because the applicant failed to provide the final dispositions for his August 23, 1997 Cocaine Possession charge. On September 17, 2003, the applicant filed a subsequent late initial TPS application. The Director, Vermont Service Center, denied that application on July 20, 2004 because the applicant failed to establish eligibility for late registration and because he failed to provide the disposition for his August 23, 1997 Cocaine Possession charge.

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

The record of proceeding 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 from March 9, 2001 through September 9, 2002, he fell within the provisions described in 8 C.F.R. § 244.2(f)(2) (listed above). If the qualifying condition or application has expired or been terminated, the individual must file within a 60-day period immediately following the expiration or termination of the qualifying condition in order to be considered for the late initial registration. 8 C.F.R. § 244.2(g).

On June 3, 2002 and on July 20, 2004, the applicant was informed of the reasons his previous TPS applications were denied. According to the director, the applicant has not provided any new and compelling evidence that overcomes the reasons for denying the initial and subsequent TPS applications. Therefore, the director denied the application.

On appeal, the applicant states that he had previously submitted the requested evidence and requests that this information be reviewed. The applicant also submits evidence in an attempt to establish his eligibility for TPS. However, 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 failed to establish his eligibility for late registration will be affirmed.

The second and third issues in this proceeding are whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

In support of his TPS applications, the applicant submitted the following evidence:

1. Copies of an El Salvadoran birth certificate and passport and a birth certificate indicating the applicant's child was born on February 12, 2008.
2. Copies of an Overdue Notice for Parking Violations from the City of Chelsea dated May 17, 2001; a bill from Commerce Insurance dated June 20, 2001; the applicant's Social Security Card; a letter from Thrifty Financial Services dated October 22, 2001; payment receipts dated November 29, 2001, November 28, 2002, and April 17, 2003; and a Lost Plate Receipt from the Commonwealth of Massachusetts dated July 5, 2002.
3. Copies of a Money Gram receipt dated November 15, 2002; a Statutory notice of cancellation dated February 13, 2003; money order receipts dated September 13, 2003, September 18, 2007, and August 15, 2008; a receipt

from [REDACTED], dated September 13, (No Year); 2004, 2005, 2007 tax documents; an earnings statement dated November 10, 2007; a payroll report for the period from October 22, 2007 to November 3, 2007, a bill from [REDACTED] and a gas bill dated March 3, 2009.

The applicant was informed on June 3, 2002 and on July 20, 2004 of the reasons for the denial of his previous TPS applications. As stated above, the director determined the applicant had not provided any new and compelling evidence that overcomes the reasons for denying the initial and subsequent TPS applications.

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 submits:

4. Copies of a Drug, Alcohol, Traffic Awareness Program Certificate issued on April 1, 2000 and receipts from the Florida Division of Driver Licenses dated April 18, 2000, August 26, 2000, and November 28, 2000.
5. Copies of a Florida Identification Card issued on June 6, 2000 and a Florida Driver License issued on April 5, 2000; a Massachusetts Driver's License with an expiration date of May 7, 2014; airline passenger boarding passes issued on October 30, 1996; October 28, 1996; and August 14, 2000; tax documentation for the year 2000; a Certificate of Registration dated February 12, 2001; and money order receipts dated February 12, 2001, and March 12, 2001.

The passport and birth certificate establish the applicant's identity and nationality. The April 1, 2000 certificate, the receipts from the Florida Division of Driver Licenses; the Florida ID and Driver License; and the boarding passes indicate the applicant was present in the United States prior to the qualifying dates to establish continuous residence and continuous physical presence. The applicant failed to provide any evidence of his presence in the United States in 2006. Consequently, this evidence can not establish the applicant's requisite continuous residence and continuous physical presence.

The applicant has not submitted sufficient evidence to establish his qualifying residence since February 13, 2001, and his continuous physical presence in the United States from March 9, 2001 to the date the application was filed. 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 temporary protected status on these grounds will also be affirmed.

The fourth issue is whether the applicant has submitted the requested court disposition for his "Cocaine Possession" arrest. The applicant's previous TPS applications were denied, in part, because he failed to submit requested court documentation relating to his criminal record. The director determined that, in regards to the current TPS application, the applicant has still failed to provide this requested documentation. Consequently, the director determined that the applicant's failure to submit

evidence necessary for the proper adjudication of the application is a basis for denying the application.

On appeal, the applicant states that he had previously submitted a document that stated that no such record was found. However, there is no such document in the record. The only related document is a Request for Certified Court Records & Notarized Power of Attorney which is addressed to the Florida Department of Law Enforcement indicating the applicant had been arrested by the Miami, Florida Police Department. However, the Federal Bureau of Investigations Fingerprint Report indicates that the applicant was arrested by the Hialeah Police Department. Therefore, it appears that the applicant provided incorrect information in an attempt to obtain court records. The applicant has failed to submit evidence necessary for the proper adjudication of the application. Consequently, the director's decision to deny the application for temporary protected status on these grounds 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.