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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: [REDACTED]  
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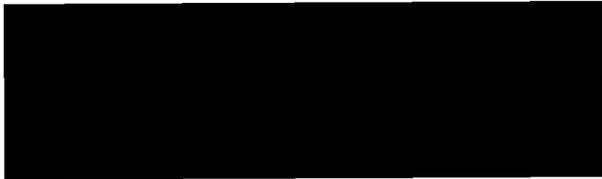
Office: VERMONT SERVICE CENTER

Date: MAR 01 2010

IN RE: 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 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 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 was convicted of a felony and two or more misdemeanors. The director, therefore, denied the application.

On appeal, counsel for the applicant states that the applicant will gather additional documentary evidence that will show that the felony charge was dismissed thereby rendering him eligible for TPS and will submit the evidence within 30 days.

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. 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 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 September 28, 2006.

The record reveals the following offenses in California:

- (1) On September 30, 1995, the applicant was arrested by the San Bernardino Sheriff's Office for "Inflict Corp Inj Sp/Cohab." (Docket # 385168). Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
- (2) On November 26, 2000, the applicant was arrested in San Bernardino for driving under the influence in violation of section 23152(a) VC and for driving with a blood alcohol level of .08% or higher in violation of section 23152(b) VC. [REDACTED] On February 26, 2001, the applicant pled guilty to these two misdemeanors.
- (3) On October 3, 2001, the applicant was arrested by the San Bernardino Sheriff's Office for "Inj Spse/Cohab." [REDACTED] The applicant pled guilty to this misdemeanor on October 30, 2001.
- (4) On December 3, 2001, the applicant was arrested by the San Bernardino Sheriff's Office for "Inflict Corp Inj Sp/Cohab." [REDACTED] Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
- (5) On February 18, 2002, the applicant was arrested by the San Bernardino Sheriff's Office for "Contempt, Disobey Ct Order" in violation of section 166.4 PC. [REDACTED]. This charge

relates to a previous arrest for disorderly conduct. The applicant pled guilty to this misdemeanor on July 11, 2002.

- (6) On June 25, 2002, the applicant was arrested by the San Bernardino Police Department for disorderly conduct in violation of section 647(f) PC. [REDACTED]. On October 11, 2002, the applicant pled guilty to this charge and to an additional charge of failure to appear in violation of section 853.7 PC, both misdemeanors.
- (7) On June 26, 2002, the applicant was arrested by the San Bernardino Sheriff's Office for "Contempt, Disobey Ct Order." Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
- (8) On August 20, 2002, the applicant was arrested by the San Bernardino Sheriff's Office for "Inf Corp Inj. Spouse/Cohab." Despite the director's request, the applicant has failed to provide the final court disposition for this offense.
- (9) On June 24, 2003, the applicant was charged with disorderly conduct in violation of section 647(f) PC. [REDACTED]. On August 26, 2003, the applicant pled guilty to this misdemeanor.
- (10) On July 13, 2003, the applicant was arrested by the San Bernardino Sheriff's Office for hit and run in violation of section 2002 VC and for driving with a blood alcohol level of .08% or higher in violation of section 23152(b) VC. On November 18, 2003, the applicant pled guilty to these two misdemeanors.
- (11) On September 17, 2003, the applicant was arrested by the San Bernardino Police Department for inflicting corporal injury on his spouse or cohabitant in violation of section 273.5(a) PC. [REDACTED]. The offense was charged as a felony and the applicant pled guilty to this offense on November 18, 2003.
- (12) On November 28, 2004, the applicant was arrested by the San Bernardino Sheriff's Office for disorderly conduct in violation of section 647(f) PC. [REDACTED]. On April 6, 2006, the applicant pled guilty to this misdemeanor.

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 and second 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.

The record shows that the applicant filed his TPS application on September 28, 2006. On July 14, 2008, the applicant was provided the opportunity 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 nationality and identity, his continuous residence in the United States since February 13, 2001, and his 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(s) relating to his criminal record. The applicant, in response, provided evidence in an attempt to establish continuous residence and continuous physical presence during the qualifying period. In addition, the applicant submitted evidence of his eligibility for late registration and the requested certified court dispositions.

Specifically, the applicant submitted:

- a. Copies of his birth certificate with English translation; his El Salvadoran Passport issued in Los Angeles, California on January 23, 2007; employment authorization cards with expiration dates of March 11, 2001 and March 11, 2001; and State of California Driver Licenses issued on May 17, 1993 and March 16, 2006.
- b. Copies of a statement from [REDACTED]; Certificates of Completion dated June 7, 2003, March 24, 2004, and June 7, 2005; and a divorce decree dated October 26, 2005.

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. Therefore, the director denied the application.

The passport and birth certificate establish the applicant's nationality and identity. USCIS records also establish that the applicant had a pending asylum application during the initial registration period and was therefore eligible for late initial registration. [REDACTED] states that she has known the applicant since 2000. However, this statement has 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. One of the driver's licenses indicates the applicant was present in the United States in 1993 and the remaining evidence submitted is dated subsequent to the qualifying dates to establish continuous residence and continuous physical presence in the United States. The

applicant has failed to provide any evidence of his residence and presence in the United States between 1993 and March 2001.

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 conclusion that the applicant failed to establish continuous residence and continuous physical presence will be affirmed.

The third issue in this proceeding is whether the applicant is ineligible for TPS because of his criminal convictions. Counsel states on appeal that the applicant will gather additional documentary evidence that will show that the felony conviction (No. 11, above) was "dismissed by the Superior Court of the State of California, thereby rendering him eligible for [TPS]." Counsel stated that he would provide corroborating evidence within 30 days; however, no evidence of such action by the court has been received. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Therefore, it must be concluded that the applicant has been convicted of a felony as detailed in No. 11, above. Moreover, it is noted that counsel failed to address the applicant's record of ten misdemeanor convictions detailed in Nos. 2, 3, 5, 6, 9, 10 and 12, above. Nor has counsel provided the final dispositions for the charges detailed in Nos. 1, 4, 7 and 8, above.

The applicant is, therefore, ineligible for TPS because of his criminal convictions. 8 C.F.R. § 244.4(a). Accordingly, the director's decision to deny his TPS application is 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.