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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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U.S. Citizenship
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FILE: [REDACTED]
[EAC 08 311 70107]

Office: VERMONT SERVICE CENTER

Date: OCT 07 2009

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: 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 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 had failed to establish that he was eligible for filing his TPS application after the initial registration period from March 9, 2001 through September 9, 2002. In addition, the director found that the applicant had failed to establish his nationality and identity, and determined that the applicant is ineligible for TPS because of two misdemeanor convictions. The director, therefore, denied the application.

On appeal, the applicant asserts that he is eligible for late initial registration and requests that the director reconsider his decision because the misdemeanors were not “especially serious” and he is otherwise eligible 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.

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 August 23, 1992, the applicant was arrested by the Los Angeles, California Police Department for "F GTA Motor Vehicle/Trailer/Vessel." [REDACTED]).
- (2) On February 2, 1993, the applicant was arrested by the Los Angeles, California Police Department for "F Poss Mfg Sell Dang Weapon." [REDACTED]

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.

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 3, 2008.

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 3, 2008. On October 15, 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. In addition, the applicant was requested to submit certified final court dispositions for each charge against him. The applicant, in response, provided the requested final court dispositions. He did not present evidence of his nationality and identity or evidence of his eligibility for late registration. Therefore, the director denied the application.

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

On appeal, the applicant requests that the director reconsider his decision because he does not believe the misdemeanors were “especially serious” considering his length of time in the United States and he is clearly qualified for TPS in all other respects.

The record reflects that the applicant filed an Application for Asylum and Withholding of Removal, (Form I-589) on April 8, 2005. The asylum application was denied by an Immigration Judge on July 6, 2007, and the applicant’s appeal of that decision was dismissed by the Executive Office for Immigration Review, Board of Immigration Appeals, (BIA) on April 15, 2009. While the applicant maintains that his asylum application was pending when he applied for late initial registration, the Immigration Judge and the BIA determined, *inter alia*, that the applicant had not filed his asylum application within one year of the time he entered the United States. See 8 C.F.R. § 1208.4(a)(2)(i)(A). The applicant did not file his asylum application until April 8, 2005, therefore, the applicant did not have an application for asylum pending during the initial TPS registration period from March 9, 2001 through September 9, 2002. The applicant can not demonstrate eligibility for late registration under 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 issue in this proceeding is whether the applicant has established his nationality and identity. As discussed by the director, the applicant submitted a copy of his birth certificate with an English translation. However, 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. It is also noted that the applicant’s middle name is listed as [REDACTED] on his El Salvador passport, however, the applicant used the middle name [REDACTED] on his Form I-821, Application for Temporary Protected Status, and his Form I-765, Application for Employment Authorization. This discrepancy has not been satisfactorily explained. Doubt cast on any aspect of the applicant’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has not established his nationality or identity, therefore, the director’s decision to deny the TPS application for this reason is also affirmed.

The third issue in this proceeding is whether the applicant is ineligible for TPS because of his misdemeanor convictions. As stated above, in response to a notice from the director, the applicant submitted the final court dispositions for his arrests which establish that on February 4, 1993, the applicant was convicted of “Possess/Mfg/Sell/Dangerous Weapon,” a misdemeanor and on July 20, 1993, the applicant was convicted of “Drive While Lic Suspend,” a misdemeanor. Despite the applicant’s claim that the misdemeanors were not “especially serious,” the applicant is ineligible for TPS because of his misdemeanor convictions. The director’s decision on this ground is also 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.