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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MI

[Redacted]

FILE:

[Redacted]

Office: CALIFORNIA SERVICE CENTER

Date: SEP 2 2007

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded for further consideration and action.

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 denied the application after determining that the applicant had abandoned her application by failing to respond to a request for evidence.

On appeal, the applicant states that she has filed a Freedom of Information Act (FOIA) request and will submit a statement and/or additional evidence after her FOIA request has been complied with. It is noted that there is no FOIA request contained within this applicant's record.

Pursuant to 8 C.F.R. § 244.9(c), failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution.

The record shows that the applicant filed her Form I-821, Application for Temporary Protected Status, on August 13, 2002. On March 3, 2003, the applicant was requested evidence of identity and nationality and evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant was also asked to provide a certified copy of the final court disposition of her arrest by police officers in San Francisco, California, on July 28, 1997, on the following charges: "petty theft retail merchandise", and "contribute to delinquency minor."

The director denied the application on February 18, 2004, after determining that the applicant had abandoned his application by failing to respond to a request for evidence. However, the applicant mailed her response on March 30, 2003, and her response was received at the California Service Center on March 31, 2003.

In her response to the director's request for additional evidence, the applicant provided evidenced of identity and nationality; evidence in an attempt to establish her continuous residence and physical presence in the United States; and, a letter dated March 17, 2003, from [REDACTED] Captain of the Records and Identification Bureau, Sheriff's Department Headquarters, County of Los Angeles, Monterey Park, California, stating that a "name search only" inquiry for the last 5 years showed no record with the Los Angeles County Sheriff's Department for [REDACTED]

[REDACTED] date of birth November 16, 1965. It is noted that the applicant did not request a search under the name [REDACTED] the name she gave to police officers when she was arrested in San Francisco on July 28, 1997. It is further noted that the applicant did not claim to have used the name [REDACTED] on the Form I-821. The applicant also provided a copy of court records relating to her misdemeanor charges; however, the material does not include the final court disposition of her charges. Additionally, it is noted that when the applicant failed to appear for a pre-trial conference on September 2, 1997, a bench warrant was issued and bail set at \$10,000; the issuance of a bench warrant for failure to appear constitutes a misdemeanor in the State of California. Although the applicant has not provided a copy of the final court disposition of her

charges, she may be inadmissible under section 212(a) of the Act. Therefore, she may be ineligible for TPS under 8 C.F.R. § 244.3(c)(1) as an alien who has been convicted of two or more misdemeanors. The director shall fully adjudicate the application and enter a new decision.

As always, 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.

ORDER: The matter is remanded for further consideration and action.