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U.S. Citizenship  
and Immigration  
Services

MM

[REDACTED]

FILE:

[REDACTED]  
[SRC 99 229 51511]

Office: MIAMI DISTRICT

Date: DEC 05 2005

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:

[REDACTED]

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.

*Cindy M. Gomez*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Miami District, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action. Ordinarily, when an application is denied due to abandonment, the AAO lacks jurisdiction over the corresponding motion. In this case, however, the denial due to abandonment was made in error. Therefore, the submission will be treated as a timely appeal and will be considered. The appeal will be dismissed.

The applicant is a native and citizen of Honduras 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 his application by failing to respond to a request for evidence regarding his criminal record.

The record reveals that the applicant filed his initial TPS application on July 16, 1999. On April 23, 2002, the applicant was requested to submit additional evidence regarding his arrests and certified final court dispositions for all charges against him. The applicant was also requested to submit additional evidence establishing his continuous residence in the United States since December 30, 1998.

The director's decision indicates that there was no response from the applicant and, therefore, the director concluded that the applicant had abandoned his application and denied the application on March 1, 2004. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant, through counsel, timely responded to the director's denial decision.

The record contains documents that were submitted in a packet and that are dated in May 2002. Although the envelope and documents submitted by the applicant are not date-stamped by the Miami District Office, nevertheless, the documents pertain to the issues as requested by the director and are in response to the April 23, 2002, request for additional evidence. Therefore, the record reflects that the denial due to abandonment was made in error.

On appeal, counsel for the applicant submits a brief and additional evidence.

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 is eligible for TPS only if such alien establishes that he or she:

- (a) Is a national of a 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 Temporary Protected Status 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.

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.

The record reveals the following offenses:

- (1) On December 19, 1990, the applicant was arrested by the Los Angeles Police Department and charged under 273.5(A) PC – "INFLICT CORPORAL INJ SPOUSE/COHAB;"
- (2) On December 21, 1990, in Municipal Court Metro Los Angeles, the applicant was found guilty of the charges under 273.5(A) PC – "INFLICT CORPORAL INJ SPOUSE/COHAB" as detailed in Number 1 above, a Misdemeanor, and was sentenced to confinement, probation and a work program;
- (3) On February 5, 1993, the applicant was arrested by the Los Angeles Police Department on a Warrant related to the charges discussed above at numbers 1 and 2, and charged under 273.5(A) PC – "INFLICT CORPORAL INJ SPOUSE/COHAB;"
- (4) On December 5, 1995, the applicant was arrested by the Los Angeles Police Department, and charged under 242 PC- "BATTERY;"
- (5) On January 22, 1996, in a court action, the charge under "243(E) PC – BATTERY: SPOUSE/ ETC" was dismissed due to delay;
- (6) On May 25, 1996, the applicant was arrested by the Los Angeles Police Department and charged under 4463(A)(1) "VC- FORGE/ALTER VEH REGISTRATION/ETC;"
- (7) On June 19, 1996, in a court action, the charge under "4462.5 VC – SHOW ON VEH/GIVE OFFICER UNLAWF REG," was dismissed with a plea to another charge, and a conviction under "4462(B) VC- SHOW ON VEH/GIVE OFFICER UNLAWF DOC."

Pursuant to a letter dated April 23, 2002, the applicant was requested to submit the arrest records, final court dispositions, and other information for each of the charges detailed above. In response, the applicant submitted photocopies of the following documentation: his Honduran national identity document issued on February 22, 1997; his California Identification Card issued on June 15, 1989; his California Driver's License issued on June 17, 1996; his employment authorization document (EAD) under category C19 with validity from July 5, 2001 through July 5, 2002; a letter dated May 13, 2002, from the Assistant Manager of the Record Support Section, Bureau of Criminal Identification and Information, State of California, with an attached criminal record check, dated May 13, 2002, indicating the charges listed above at Numbers 1, 2, 3, 4 and 6.

The director incorrectly determined that the applicant had failed to submit a response and denied the application due to abandonment on March 1, 2004.

On appeal, the applicant asserts that he never abandoned his application and counsel resubmits the materials listed above that are dated in May 2002, with copies of an April 29, 2002, money order payable to the Department of Justice Records, Sacramento, California, and a mailing receipt postmarked May 28, 2002. In addition, counsel submits an amended printout dated August 1, 2002, from the Bureau of Criminal

Identification and Information, State of California, reflecting the criminal information identified above at Numbers 1-7.

As previously noted, the director erred in determining that the applicant had not responded to the request for additional evidence. Nevertheless, the applicant has not submitted certified final court dispositions for the charges detailed above, along with evidence such as sentencing guidelines and relevant penal codes, in order to establish that the applicant has not been convicted of two or more misdemeanors or a felony. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, the application must be denied for this reason.

Based on the documentation that was submitted, it appears that the applicant would be ineligible for TPS due to his record of at least two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). The record check indicates the applicant's misdemeanor conviction for the charge(s) discussed in Numbers 1 and 2 above. The record also indicates a conviction as detailed above at Number 7, which under the California Code section 4462 (B), is also classified as a misdemeanor.

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.