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

MI

FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: OCT 03 2005
[REDACTED]
[EAC 01 192 54426]

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Vermont Service Center. A motion to reopen, filed by the applicant, was granted by the director and she again denied the application. The applicant's appeal of the director's decision on the motion 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 initially denied the application on August 29, 2002, after determining that the applicant had abandoned his application by failing to submit requested court documentation relating to his criminal record.

On motion, the applicant states that he never received a notice requesting additional evidence.

The director reopened the case and denied the application on July 7, 2004, because she found that the applicant had failed to submit requested court documentation relating to his criminal record.

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 August 7, 1998, the applicant was arrested and charged with “Inflicting Corporal Injury Spouse/Cohab.”
- (2) On March 30, 1999, the applicant was arrested and charged with “Inflicting Corporal Injury Spouse/Cohab.”

On December 18, 2001, the applicant was provided the opportunity to submit the final disposition of every charge against him. The applicant failed to respond to the notice. The director, therefore, denied the application as abandoned.

On motion, the applicant states that he never received a request for additional information.

Pursuant to a letter dated February 25, 2004, the applicant was again requested to submit the final court disposition for each of the charges detailed above. The notice was returned to by the United States Post

Office as undeliverable, and no forwarding address was provided. The notice was sent to [REDACTED] the applicant's address of record.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 7, 2004.

On appeal, the applicant states that he did not submit the requested evidence because he never received a notice requesting the final dispositions. According to the applicant, he submitted a change of address on December 4, 2003. However, there is nothing in the record to indicate that a change of address was received. Therefore, the request for the final disposition was sent to the applicant's address of record. Moreover, the applicant admits on appeal that he is aware that he has been requested to provide the final disposition, but, to date, he has not submitted the requested documentation or any additional evidence relating to his criminal record.

The applicant has failed to provide any evidence revealing the final court disposition of his arrests detailed above. 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).

Beyond the director's decision, it is also noted that the record contains a Form I-205, Warrant of Removal and Deportation dated July 24, 2001. It does not appear that the warrant was executed. However, it presents the possibility that the applicant was deported and returned to the United States, without permission contrary to section 212(a)(9) of the Immigration and Nationality Act. Consequently, the applicant may not have maintained continuous residence or physical presence in the United States during the qualifying period pursuant to 8 C.F.R. §§ 244.2(b) and (c).

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.