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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **OCT 19 2005**
[WAC 01 172 53483]

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 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 denied the application after determining that the applicant had abandoned his application by failing to respond to his request to submit the final court dispositions of his arrests on December 14, 2000, and on July 4, 2002.

On appeal, the applicant states that he did submit one court document, and that the other document was to be submitted by the Los Angeles Police Department (LAPD).

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record shows that the applicant filed his application on March 27, 2001. In a notice of intent to deny dated January 29, 2004, the applicant was requested to submit the final court dispositions of all of his arrests listed in the Federal Bureau of Investigation fingerprint results report. Because the applicant, in response, failed to submit the final dispositions of all the arrests listed, the director concluded that the applicant had abandoned his application and denied the application on March 19, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's notice of intent by submitting the final court disposition of his December 14, 2000, arrest. The response was received by the California Service Center on February 12, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of 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.

The record reveals the following offenses:

- (1) On December 28, 2000, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No [REDACTED] (arrest date December 14, 2000), the applicant, under the name of [REDACTED] was indicted for

Count 1, driving under the influence of alcohol/drug, 23152(a) VC, a misdemeanor; and Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor. On January 4, 2001, the applicant was convicted of Count 2. He was: placed on probation for a period of 36 months under the condition that he serve 48 hours in the county jail; ordered to pay \$1,332 in fines and costs; ordered to enroll and successfully complete a 6-month first-offender alcohol and other drug education and counseling program; and, his driving was restricted for 90 days. Count 1 was dismissed.

- (2) On July 4, 2002, in Los Angeles, California, the applicant was arrested for "DISORD CONDUCT, UI/DRUG." The final court disposition of this arrest is not contained in the record.

On appeal, the applicant expresses remorse for his past behavior and states that he has taken the necessary steps to improve his life and be an excellent candidate to obtain TPS. He states that he did submit one court document, and that the other document was to be submitted by the LAPD because they refused to release the information directly to him. The applicant requests that he not be held responsible for the non-performance of the LAPD.

While the record shows that the LAPD did receive the applicant's request for information relating to his arrest listed in No. 2 above, as of this date, no information has been received from the LAPD. Upon receiving the director's decision to deny, the applicant could have made a follow-up inquiry with the LAPD. Regardless, the record shows that the director, in his notice of intent to deny dated January 29, 2004, correctly advised the applicant that the final dispositions should be obtained from the courts where the hearing took place.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest, detailed in No. 2 above. Therefore, the applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application, and the application must be denied. 8 C.F.R. § 244.9(a).

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.