U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] OFFICE: CALIFORNIA SERVICE CENTER DATE: SEP 05 2006
[WAC 01 239 59184]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. The application 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.

On July 23, 2003, the director denied the application due to abandonment under 8 C.F.R. § 244.9(c) because the applicant failed to provide the requested final court disposition of his arrest in Los Angeles, California, on July 10, 1997, on the charge of grand theft auto, a felony. Specifically, the director stated in the denial decision:

> On February 26, 2003, the Service received a response from the applicant. The response contains a letter which is issued by **the Las Vegas Metropolitan Police Department**. However, the applicant failed to submit evidence pertaining to his arrest in Los Angeles County. Therefore, the application is denied due to abandonment.

On appeal, the applicant requests a 60-day extension in order to submit a brief and/or additional evidence. To date, the applicant has not submitted a brief or any additional evidence. Therefore, the record will be considered complete.

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
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> (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.

As previously stated, the record reveals that the applicant was arrested in Los Angeles, California, on July 10, 1997, and charged with grand theft auto, a felony.

Pursuant to a letter dated February 12, 2003, the applicant was requested to provide the final court disposition of the charge detailed above. The applicant's response to the notice was received at the California Service center on February 24, 2003. The applicant, in response, submitted a letter from the Metropolitan Las Vegas Police Department stating that no criminal record was found for [redacted]' date of birth March 2, 1972. The letter also bore the notation, "Identity not verified by fingerprints."

The director determined that the applicant had abandoned his application by failing to submit the requested final court disposition of his arrest and denied the application on July 28, 2003.

On appeal, the applicant has failed to provide the final court disposition of his arrest.

The Las Vegas Metropolitan Police Department letter submitted by the applicant with his response to the Notice of Intent to Deny is insufficient to establish the applicant's eligibility for TPS as this document does not reflect the final court disposition of the applicant's arrest. As noted by the director, the applicant was arrested in Los Angeles, California, not in Las Vegas, Nevada. Furthermore, the applicant's criminal record was discovered through an FBI fingerprint search. FBI records are regulated by law and furnished for official use only. It is the position of Citizenship and Immigration Services (CIS) that an FBI fingerprint search provides a more thorough account of an applicant's criminal background than local record searches conducted by name.

Since the applicant did respond to the notice of intent to deny dated February 12 2003, however, it cannot be concluded that the applicant abandoned his application. The submission of insufficient evidence in response to a request for additional evidence cannot be considered the abandonment of an application under 8 C.F.R. § 103.2(b)(13) or 8 C.F.R. § 244.9(c). Therefore, the director's conclusion that the applicant abandoned his application is withdrawn.

Nevertheless, the application must be denied because the applicant has failed to provide a court document reflecting the final court disposition of his arrest 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). Consequently, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has also failed to provide sufficient evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods as described at 8 C.F.R. § 244.2(b) and (c). Therefore, the application also must be denied for these reasons.

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.