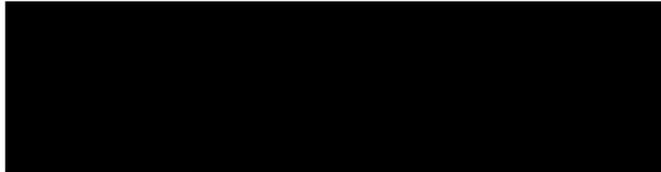


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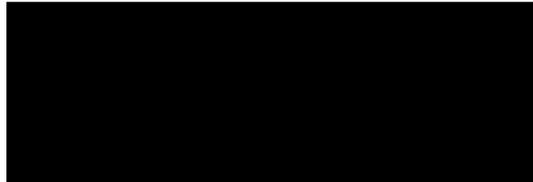
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[WAC 02 112 52802]

OFFICE: CALIFORNIA SERVICE CENTER DATE: APR 09 2007

IN RE:

Applicant:



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.

Cindy N. Gomez for
Robert P. Wiemann, Chief
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 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 record indicates that the applicant filed his TPS application on February 8, 2002. Based on the Federal Bureau of Investigation (FBI) fingerprint results report indicating that the applicant was arrested on December 22, 2002, in Los Angeles, California, for "VIOL/ETC REAL ESTATE REGS," a notice of intent to deny was issued on March 17, 2004, requesting that the applicant submit the final court disposition of this arrest and of all other arrests. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on March 13, 2004.¹ The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on June 1, 2004. The applicant requested that his TPS application be reopened, and stated that he did not respond to the director's request because he was unemployed and he was not able to pay the costs for the paperwork. He submitted court records of his arrests.

Citizenship and Immigration Services (CIS) records and database indicate that the director subsequently reopened the applicant's case on "Service Motion" on June 7, 2004, and again denied the application on June 7, 2004. Neither the motion nor the denial decision is contained in the record of proceeding, and it is not clear in the record whether the motion to reopen and the denial decision were mailed to the applicant.

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:

¹ The director's denial decision based on abandonment was incorrectly dated March 13, 2004. CIS database indicates that the denial decision was, in fact, dated and mailed to the applicant on May 13, 2004.

- (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) The FBI report indicates that on December 22, 2002, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for "VIOL/ETC REAL ESTATE REGS." The final court disposition of this arrest is not contained in the record. It is not clear in the record whether this arrest is related to No. (2) below.
- (2) On January 13, 2003, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date December 22, 2002), the applicant (name used: [REDACTED]) was indicted for Count 1, "driving under the influence of alcohol," 23152(a) VC, a misdemeanor; and Count 2, "driving with .08 percent blood alcohol level or more," 23152(b) VC, a

misdemeanor. On January 16, 2003, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to pay the total of \$1,342 in fines and costs or serve 13 days in the county jail, to enroll and successfully complete a 3-month licensed first-offender alcohol and other drug education and counseling program, and driving was restricted for 90 days. Count 1 was dismissed.

- (3) On March 11, 2004, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date February 9, 2004), the applicant (name used: [REDACTED]) was indicted for Count 1, "forge/alter vehicle registration," 4463(a) VC, a felony. On May 6, 2004, the court ordered the complaint amended by interlineations to add the misdemeanor violation of 496(a) PC, "receiving/concealing stolen property," as to Count 3. He was placed on probation for a period of 3 years under the condition that he serve 3 days in the county jail, to perform 20 days of "Cal Trans," and ordered to pay restitution fine in the amount of \$100. The court record does not list any charges under Count 2; however, the record shows that "remaining counts [were] dismissed" by the court.
- (4) The FBI report indicates that on February 25, 2004, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for "grand theft, gun/animal/etc." The final court disposition of this arrest is not contained in the record.
- (5) On December 23, 2004, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date April 3, 2004), the applicant (name used: [REDACTED]) was indicted for "burglary," 459 PC, a felony. On April 22, 2005, the applicant was convicted of the felony offense. He was placed on probation for a period of 3 years under the condition that he serve 2 days in the county jail, and ordered to make restitution to the victim in the amount of \$1,521.30.
- (6) The FBI report indicates that on February 7, 2005, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for "grand theft, gun/animal/etc." The final court disposition of this arrest is not contained in the record.
- (7) The FBI report indicates that on April 12, 2005, in Norwalk, California, the applicant (name used: [REDACTED]) was arrested for "receive known stolen property-\$400." The final court disposition of this arrest is not contained in the record. However, it appears from the court record that this arrest relates to No. (3) above [probation violation].
- (8) On May 18, 2005, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date May 12, 2005), the applicant (name used: [REDACTED]) was indicated for Count 1, "driving without owner's consent," 10851(a) VC, a felony; and Count 2, "receiving/concealing stolen property," 496(a) PC, a felony. The applicant failed to appear for preliminary hearing scheduled for June 20, 2005, and a bench warrant was issued. On September 1, 2005, the applicant appeared in court and he was ordered to appear on the next court date scheduled for September 22, 2005, the bench warrant was recalled, and the court ordered that the applicant be "remanded to custody." The outcome of the court hearing, scheduled for September 22, 2005, is not reflected in the court record, nor did the applicant submit the final court disposition of this offense.

The applicant is ineligible for TPS due to his convictions of at least one felony (No. 5 above) and two misdemeanors (Nos. 2 and 3 above), and because he failed to provide the final court dispositions of his arrests detailed in Nos. 1, 4, 6, and 8 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

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.