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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

[REDACTED]

OFFICE: California Service Center

DATE:

APR 27 2007

[consolidated with  
and  
[REDACTED]

[EAC 03 033 52012]

[WAC 05 223 71308]

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 Director, California Service Center, withdrew the applicant's previously granted Temporary Protected Status and denied his re-registration application. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 re-registration application for failure of the applicant to provide final court dispositions for all of his criminal arrests and convictions, and withdrew the applicant's previously approved TPS on the ground that the applicant had failed to comply with the re-registration requirements.

The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. *See* 8 C.F.R. § 244.14(a)(1).

On appeal, counsel asserts that the director erred in denying the application since the applicant has already submitted the court dispositions of his criminal arrests on several occasions.

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 that the applicant, who was initially granted TPS on May 29, 2003, pursuant to an application filed on September 3, 2002, filed the current re-registration application on May 11, 2005. On September 26, 2005, the director issued a Notice of Intent to Withdraw (NOIW) the applicant’s TPS on the basis of CIS (Citizenship and Immigration Services) records indicating that the applicant had been arrested seven times in and around Baltimore, Maryland, between 1995 and 2004. The applicant was requested to submit evidence of the final court disposition(s) of these and all other arrests in the United States.

In a letter dated October 25, 2005, counsel requested an additional 60 days to respond to the NOIW. No response was submitted to the NOIW in the next 60 days, however, or at any time thereafter.

On August 23, 2006, the director issued a Notice of Withdrawal of TPS, and Notice of Decision to Deny TPS Re-Registration. The director stated that the applicant had failed to adequately respond to the NOIW, which constituted both a failure to re-register for TPS in the form and manner specified by CIS and an abandonment of the re-registration application, citing the regulations at 8 C.F.R. § 244.17(a) and 8 C.F.R. § 244.9(c). The director withdrew the applicant’s formerly approved TPS for failure to comply with the re-registration requirements, citing the regulations at 8 C.F.R. § 244.14(a)(3) and 8 C.F.R. § 244.17(c). The director also

denied the re-registration application for failure to provide the final court dispositions for all criminal arrests and convictions, citing the regulation at 8 C.F.R. § 244.9(c).

On appeal, counsel contends that the director erred in denying the case due to the lack of evidence since the applicant had already submitted the requested court dispositions of his criminal arrests on several occasions. Though counsel stated that "further argument will be presented within 60 days," no further correspondence has been received up to the date of this decision.

The burden of proof is upon the applicant to establish that he or she meets the requirements for TPS. Applicants shall submit all documentation as required in the instructions or requested by CIS. *See* 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof, the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. *See* 8 C.F.R. § 244.9(b).

A review of the record shows that final court dispositions were submitted earlier in this proceeding for certain arrests of the applicant that occurred in the years 1995 to 1999, and that this evidence was submitted prior to the approval of the initial TPS application in May 2003. However, no final court dispositions have been submitted of three later arrests in the years 2003 and 2004, which were listed in the director's NOIW in September 2005.

The AAO concurs with the director's decision, therefore, that the applicant has failed to adequately respond to the NOIW. The applicant has not provided final court dispositions of all of his arrests and, as a result, has not established, in accordance with the requirements of Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a), that he has not been convicted of a felony or two or more misdemeanors committed in the United States. Accordingly, the director's decision to withdraw the applicant's previously approved TPS and deny the application for re-registration will be affirmed.

In any future proceedings before CIS the applicant must submit evidence of the final court dispositions of the charges stemming from his three arrests in 2003 and 2004, and any other charges against him for which final court dispositions are not already in the record.

The AAO notes that the applicant was placed in removal proceedings in 1997. The record indicates that proceedings before the Immigration Judge were closed on May 16, 1997, however, and the Board of Immigration Appeals (BIA) subsequently ordered the termination of appeal proceedings on June 26, 2001, noting that the alien may be eligible to apply for TPS.

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 that burden.

**ORDER:** The appeal is dismissed.