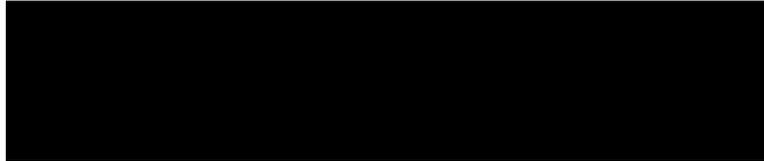




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



MJ

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 15 2007**

[WAC 01 166 51687]

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.

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 on appeal. The appeal will be dismissed.

The director denied the application for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on December 11, 2002, because the applicant had failed to submit requested court documentation relating to his criminal record.

The record, however, shows that the applicant, a native and citizen of El Salvador, was granted TPS on September 8, 2001. The director, therefore, should have withdrawn the applicant's TPS status rather than to deny the application. Pursuant to section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1), the director may withdraw the status of an alien granted TPS at any time if it is found 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. Accordingly, the decision of the director to deny the initial TPS application will be treated as a withdrawal, and a decision will be made based on withdrawal of the applicant's temporary protected status.

An alien shall not be eligible for temporary protected status 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. 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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested on January 22, 2002, to submit the final court disposition of all arrests, including his arrest listed on the FBI report. The applicant failed to respond; therefore, the director denied the application.

On appeal, the applicant submits the records of the District Court, Clark County, Nevada, under Case No. [REDACTED], indicating that on April 25, 1997, the applicant was convicted of "conspiracy to commit grand larceny," Nevada Revised Statute 199.480, 305.220, a gross misdemeanor. He was sentenced to serve 6 months in the county jail, and placed on probation for a period of one year.

The FBI report, however, also indicates that on June 8, 2003, in Phoenix, Arizona, the applicant was arrested for "DUI-LIQUOR/DRUGS/VAPORS/COMBO." The applicant has failed to submit the final court disposition of this arrest.

The applicant has failed to provide the final court disposition of his arrest for driving under the influence, listed on the FBI report. 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 applicant's temporary protected status will be withdrawn.

In removal proceedings held on June 3, 1998, in Las Vegas, Nevada, the Immigration Judge (IJ) denied the application for asylum and application for withholding of deportation and ordered the applicant removed to El Salvador. On July 2, 1999, the IJ denied the applicant's Motion to Reopen and ordered the applicant removed to El Salvador. The applicant appealed the IJ's decision to the Board of Immigration Appeals (BIA). On June 5, 2002, the BIA affirmed the IJ's decision. A Warrant of Removal/Deportation, Form I-205, was issued on July 17, 2002, in Las Vegas, Nevada.

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.