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**U.S. Citizenship
and Immigration
Services**

MI

[REDACTED]

FILE:

[REDACTED]

OFFICE: VERMONT SERVICE CENTER

DATE: JUN 12 2007

[WAC 01 190 51510]

[WAC 05 162 76868]

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DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on February 19, 2002. The director subsequently withdrew the applicant's TPS status on April 10, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) dated July 29, 2005, requesting that she submit the final court dispositions of all of her arrests, including an arrest listed on the Federal Bureau of Investigation fingerprint results report. Within the same decision, the director denied the applicant's re-registration application, filed on March 11, 2005, under Citizenship and Immigration Services (CIS) receipt number EAC 05 162 76868, because the applicant had abandoned her re-registration application based on her failure to respond to the ITW.

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. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, counsel submits a statement.

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. 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 FBI report indicates that on October 16, 2004, in Passaic, New Jersey, the applicant was arrested for Count 1, "wrongful impersonating," NJS 2C:21-17, a crime of either a fourth degree or a third degree; and Count 2, "tampering witness/informant," a crime of either a second degree or a third degree. The final court disposition of these charges is not contained in the record although the applicant was requested in the director's ITW to submit the final court disposition of this arrest and of any and all arrests.

On appeal, counsel asserts that the applicant has made a good faith attempt to respond to the director's July 2005 notice by retaining an attorney to represent her, but apparently her attorney failed to submit the response in a timely fashion or not at all. She further asserts that she is submitting a copy of the court disposition, which is a "crime of the third degree (a misdemeanor under New Jersey Law)."

A review of the record indicates that the ITW dated July 29, 2005, was mailed to the applicant's attorney (██████████) at her address ██████████. There is no evidence that the notice was returned to CIS as undeliverable. Furthermore, while counsel states on appeal that she is submitting the court disposition of the applicant's criminal offense, the court disposition is not included with the appeal. It is noted that counsel, in an accompanying letter, states that she has just been retained by the applicant and that she is enclosing a Motion to Reopen/Reconsider, a filing fee, and that a brief and/or evidence will be submitted within 30 days. To date, however, the file contains no further response from the applicant or her representative. Moreover, despite counsel's assertion, pursuant to New Jersey Statute 2C:43-6, a crime of the third degree is punishable by imprisonment for a term of 3 to 5 years. Additionally, a crime of the second degree is punishable by imprisonment for a term of 5 to 10 years; and a crime of the fourth degree is punishable by imprisonment for a term not to exceed 18 months. As provided in 8 C.F.R. § 244.1, a "felony" is defined as "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."

The applicant has failed to submit the final court dispositions of her arrests as had been requested by the director; therefore, she is ineligible for TPS. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw the applicant's TPS and to deny the re-registration application will be affirmed.

It is noted on the FBI report that the applicant had indicated that she was born in Guatemala, and that she is a citizen of Guatemala. The applicant is required to meet the eligibility requirements that she is a national of a designated foreign state pursuant to section 244(c) of the Act. The country of Guatemala is not a foreign state designated under section 244 of the Act.

The record further indicates that in removal proceedings held on June 19, 2001, in Newark, New Jersey, the Immigration Judge administratively closed proceedings to accord the applicant an opportunity 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 this burden.

ORDER: The appeal is dismissed.