



U.S. Citizenship  
and Immigration  
Services

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*ML*

[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: MAR 26 2007  
[REDACTED] consolidated within [REDACTED]  
[WAC 01 195 50648]

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: 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*  
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 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.

The director denied the application after determining that the applicant had abandoned his application by failing to submit the final court dispositions of all of his arrests.

On appeal, the applicant states that he was told by the court that they have no records of his arrests, but that he will be returning to the court and that he needs additional time to find the documents.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

In a request for evidence dated December 17, 2003, the applicant was requested to submit the final court dispositions of all of his arrests. The director noted that the Service Center received a response on January 20, 2004; however, the evidence submitted was insufficient. The director concluded that the applicant had abandoned his application and denied the application on March 2, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. The response was received by the California Service Center on January 20, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The record of proceeding contains the following:

- (1) On February 23, 2005, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date January 28, 2005), the applicant was indicted for Count 1, driving under the influence of alcohol/drugs, 23152(a) VC, a misdemeanor; and Count 2, carrying a loaded firearm, 12031(a)(1) VC, a misdemeanor. On April 27, 2005, the court ordered the complaint amended by interlineations to add as Count 4, "EXHBTN OF SPEED/ENGAG AID/ABET" in violation of 23109(c) VC, a misdemeanor. The applicant was found guilty of

Counts 2 and 4. He was placed on probation for a period of 2 years, ordered to pay \$780 in fines and costs, perform 15 days of "CAL TRANS," and attend 2 Alcoholic Anonymous meetings per week for 13 weeks, as to Count 2. He was placed on probation for a period of 2 years as to Count 4. Count 1 was dismissed. Count 3 was not identified in the court documents.

- (2) The Federal Bureau of Investigation (FBI) fingerprint results report shows that on December 8, 1996, in Norwalk, California, the applicant was arrested and charged with Count 1, "ASSAULT WITH A DEADLY WEAPON OTHER THAN FIREARM OR GREAT BODILY HARM OR FORCE," a felony; and Count 2, "VANDALISM," a misdemeanor. The final court dispositions of these charges are not contained in the record.
- (3) On November 27, 1991, in the Municipal Court of Pasadena Courthouse Judicial District, County of Los Angeles, California, Case No. [REDACTED] (arrest date October 28, 1991), the applicant was indicted for "unlicensed driver," 12500(a) VC, a misdemeanor. A bench warrant was issued on December 6, 1991, and again on December 19, 1996. On January 6, 1997, the court dismissed the case.
- (4) On March 15, 1990, in Pasadena, California, the applicant was arrested for violation of § 288(a) PC, a felony. On March 19, 1990, prosecution was rejected based on lack of sufficient evidence.

The applicant is ineligible for TPS due to his two misdemeanor convictions detailed in No. 1 above, and because he failed to provide the final court dispositions of his arrest and charges detailed in No. 2 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.

The FBI report also indicates that the applicant was apprehended by the United States Border Patrol at El Centro, California, on August 20, 1986, and that the applicant voluntarily returned to El Salvador from Los Angeles, California, on August 30, 1986 (file A27 612 333).

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.