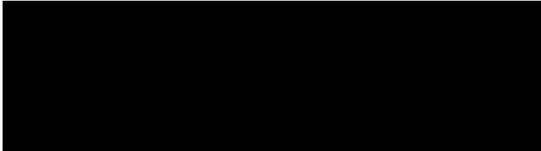


Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



M1

FILE:



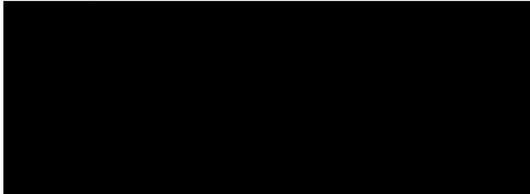
[WAC 01 171 51373]
[WAC 05 224 86394]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: MAR 26 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal.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

The applicant claims to be 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 June 8, 2004. The director subsequently withdrew the applicant's TPS status on July 26, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW) requesting that he submit the final court dispositions of all of his arrests. Within the same decision, the director denied the applicant's re-registration application, filed on May 12, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 224 86394, because the applicant had abandoned his re-registration application based on his 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, the applicant submits additional evidence.

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.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, a Notice of Intent to Withdraw was issued on September 5, 2005, requesting that the applicant submit the final court dispositions of all of his arrests, including his arrest on February 15, 2003, in Ventura, California, for "sex with minor 3+ years younger." Because the applicant failed to respond, the director withdrew the applicant's TPS status on July 26, 2006.

On appeal, the applicant submits: (1) a letter from the Superior Court, North Valley District, San Fernando Branch, Chatsworth Branch, California, dated August 24, 2006, indicating that "all Los Angeles county-

Adult Criminal System active and inactive" were searched and found no record in reference to the applicant [REDACTED] and that all misdemeanor records were destroyed pursuant to statute; (2) a letter addressed to the applicant [REDACTED] from the Ventura County Probation Agency, California, dated June 19, 2006, regarding Case Number [REDACTED] informing the applicant that his Ventura County Formal probation case had expired effective April 22, 2006, that he was no longer required to report to the probation officer, and that his case had been closed.

The applicant appears to have been convicted of an offense under Case Number [REDACTED] however, the applicant had failed to submit the court's charging documents and the final disposition of that conviction. Nor did he submit the final court disposition of the offense listed in the FBI report if that offense was, in fact, different from that of Case No. [REDACTED]. Furthermore, the destruction of court records or the closing of cases due to expiration of probation is not evidence that the applicant's conviction(s) had been dismissed. However, even if the applicant's conviction was dismissed, the Board of Immigration Appeals (BIA), in *Matter of Roldan*, 22 I&N Dec. 512 (BIA 1999), held that under the statutory definition of "conviction" provided at section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge, or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute.

The applicant has failed to provide the final court dispositions of all of his arrests, including his arrest detailed above. 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 director's decision to withdraw the applicant's TPS will be affirmed.

It is noted that although the record of proceeding contains an El Salvadoran birth certificate and English translation, the certificate was not accompanied by photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1).

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.