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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: NOV 15 2007
[WAC 01 244 51264]

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.


for 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 respond to a request for evidence.

On appeal, the applicant asserts that he did comply with the director's request to the best of his ability. He submits additional evidence.

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).

The record shows that the applicant filed his TPS application on June 19, 2001. In a notice of intent to deny the application dated February 28, 2004, the applicant was requested to provide documentation to establish his nationality and identity, and the final court disposition of all past and pending criminal cases.

The director determined that the applicant had failed to respond to his request for additional evidence and denied the application based on abandonment on May 5, 2004.

However, an examination of the record discloses that, contrary to the director's finding, the applicant did in fact respond to the director's request. The response was received by the Service Center on March 31, 2004, prior to the director's decision to deny. 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.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to El Salvadorans must demonstrate that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. Subsequent extensions of the TPS designation have been granted, with the latest extension valid until March 9, 2009, upon the applicant's re-registration during the requisite time period.

8 C.F.R. § 244.9(a)(1) states, in part:

Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated foreign state...Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

The applicant furnished with his TPS application a copy of his El Salvadoran birth certificate with English translation, and a copy of his high school identification card issued by Yerba Buena High School for the school years 1999-2000 (bearing a photograph of the applicant). In response to the director's request for

additional evidence dated February 28, 2004, the applicant submitted another copy of his birth certificate; a copy of his California Identification Card issued on April 13, 2002 (bearing a photograph of the applicant); a copy of a Social Security Card issued in the applicant's name; and a copy of his Employment Authorization Card valid from September 3, 2001 to September 9, 2002;

On appeal, the applicant submits a statement in which he asserts that due to his having left his native El Salvador at the age of 15, he was unable to obtain a "cedula" or passport from the Salvadorian Consulate. To support his claim, the applicant submits a letter from his mother, including copies of his mother's El Salvadorian birth certificate and "cedula."

Based on the applicant's birth certificate with accompanying photo identifications, it is concluded that the applicant has submitted acceptable evidence of his nationality and identity. Therefore, this finding of the director will be withdrawn.

The next issue in this proceeding is whether the applicant has been convicted of a felony or two or more misdemeanors committed in the United States.

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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Based on the Federal Bureau of Investigation (FBI) fingerprint results report, the applicant was requested, in a notice of intent to deny dated February 28, 2004, to submit the final court dispositions of his arrests listed in the FBI report, including the court dispositions of all past and pending criminal cases. In response, the applicant submitted the court documents relating to his January 13, 2001 arrest:

- (1) On April 6, 2001, in the Superior Court, County of Santa Clara, California, Case No. [REDACTED] (arrest date January 13, 2001), the applicant was convicted of possession of a weapon, in violation of 12020(a)(1) PC, a misdemeanor. He was sentenced to 30 days in the county jail, placed on probation for a period of 2 years, and ordered to pay \$568 in fines and costs. Because the applicant violated the terms of his probation, on August 20, 2001, the applicant was ordered to serve 40 days in jail.
- (2) The FBI report indicates that on August 17, 2001, the applicant was arrested or received at the Department of Correction, San Jose, California, for possess/manufacture/sell dangerous weapon/etc. (Agency Case No. [REDACTED]) The applicant has failed to submit the final court disposition of this offense as had been requested by the director.

Subsequent to the filing of the appeal on June 4, 2004, the FBI fingerprint results report was received at the Service Center indicating the following:

- (3) On August 1, 2004, the applicant was arrested or received at the Department of Correction, San Jose, California, for Count 1, possession of a controlled substance; and Count 2, use/under the influence of a controlled substance (Agency Case No. [REDACTED])
- (4) On August 29, 2004, the applicant was arrested or received at the Department of Correction, San Jose, California, for failure to appear (Agency Case No. [REDACTED])
- (5) On September 21, 2004, the applicant was arrested or received at the Department of Correction, San Jose, California, for possession of a controlled substance (Agency Case No. [REDACTED])
- (6) On November 18, 2004, the applicant was arrested or received at the Department of Correction, San Jose, California, for Count 1, three counts of failure to appear; and Count 2, failure to appear, written promise (Agency Case No. [REDACTED])
- (7) On June 18, 2005, the applicant was arrested or received at the Department of Correction, San Jose, California, for driving while privilege suspended/revoked; and Count 2, "stop lamps" (Agency Case No. [REDACTED])
- (8) On July 29, 2005, the applicant was arrested or received at the Department of Correction, San Jose, California, for driving while privilege suspended/revoked (Agency Case No. [REDACTED])
- (9) On August 29, 2005, the applicant was arrested or received at the Department of Correction, San Jose, California, for Count 1, possession of a controlled substance; and Count 2, "using or being under the" (Case No. [REDACTED])
- (10) On April 12, 2006, the applicant was arrested or received at the Department of Correction, San Jose, California, for Count 1, inflicting corporal injury on spouse; Count 2, possession of a controlled substance; and Count 3, "under the influence of a" (Agency Case No. [REDACTED])

The record shows that the applicant submitted court records indicating that he was convicted of one misdemeanor offense (No. 1 above); however, the applicant failed to submit the requested final court disposition of his arrest listed in No. 2 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 deny the application will be affirmed.

The record shows that the applicant was re-fingerprinted on June 18, 2006. The FBI results report listed additional arrests, subsequent to the director's notice of denial and the applicant's appeal, as detailed in Nos. 3, 4, 5, 6, 7, 8, 9, and 10 above. The final court dispositions of these charges are not included in the record of proceeding. CIS must address these arrests and/or convictions in any future decisions or proceedings.

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.