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

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[REDACTED]

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FILE:

[REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE:

OCT 19 2007

[WAC 01 241 56190]

IN RE:

Applicant:

[REDACTED]

APPLICATION:

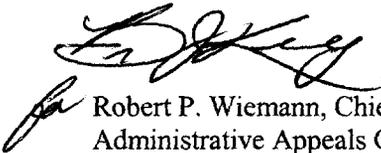
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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 application was denied by the Director, California Service Center. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion 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 on December 16, 2003, after determining that the applicant had failed to submit requested court documentation relating to his criminal record.

The appeal from the director's decision was dismissed by the AAO on August 12, 2005, after determining that the applicant: (1) had been convicted on August 22, 2003, of two misdemeanors; namely: unlicensed operator, [REDACTED] and failure to appear, [REDACTED]; and (2) had failed to submit the requested final court disposition of an arrest (under the name of [REDACTED] in Riverside, California, on November 4, 2000, for "disorderly conduct, under the influence of drug."

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i).

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.5a(b).

The record in this case shows that the AAO issued a decision dated August 12, 2005.¹ Coupled with three days for mailing, the motion, in this case, should have been filed on or before September 14, 2005. The motion was received at the California Service Center on September 16, 2005. Neither counsel nor the applicant submitted any evidence to demonstrate that the delay was reasonable and was beyond his control.

Accordingly, the motion will be dismissed, and the previous decision of the AAO will be affirmed.

It is noted that counsel, on motion, asserts that the applicant was never charged with the November 2000 arrest, and the applicant was not able to provide a final court disposition. He submits: (1) a copy of an incident report issued by the Riverside County Sheriff indicating that on November 5, 2000, the applicant (name used: Alex [REDACTED]) was arrested and charged with public intoxication, 647(f) PC, a misdemeanor; (2) a Certificate of Incarceration certifying that [REDACTED] was in custody at the Riverside County Sheriff's Department Jail from November 5, 2000 and released on November 5, 2000, under Booking [REDACTED] and Case [REDACTED]; and (3) resubmitted a copy of the January 12, 2004 letter from the Superior Court of California, County of Riverside, indicting that there was no indication of criminal activity for [REDACTED]."

No evidence was furnished to show that the court checked their records under the assumed name of "Alex [REDACTED]." It is noted that the case was assigned a case number [REDACTED]. If the applicant, in fact, was not prosecuted for that offense, the applicant could have submitted a new letter from the court and/or a letter from the state or district attorney. Additionally, counsel on motion asserts that §16028(a) and §12500(a) are not misdemeanors because they are not punishable by imprisonment for any term. While §16028(a) is indeed an infraction, according to [REDACTED] a violation of section 12500(a), relating to unlicensed drivers, "is a misdemeanor, and not an infraction." Furthermore, section 42002 of the California Vehicle Code

¹ Counsel, on motion, erroneously stated that the AAO's decision was issued on August 16, 2005

states: "Unless a different penalty is expressly provided by this code, every person convicted of a misdemeanor for a violation of any of the provisions of this code shall be punished by a fine of not exceeding one thousand dollars (\$1,000) or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment."

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The motion is dismissed. The decision of the AAO dated August 12, 2005, is affirmed.