

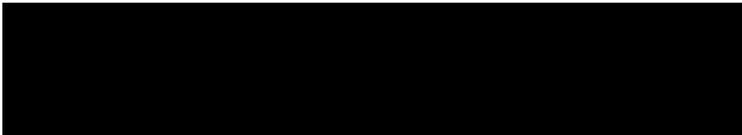


U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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Office: VERMONT SERVICE CENTER

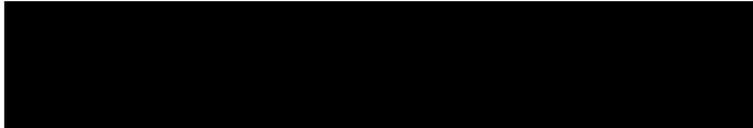
Date: JAN 03 2008

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the Vermont Service Center. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal.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 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 because the applicant had failed to respond to his Notice of Intent to Deny (NOID) dated April 16, 2007, requesting that she submit a final court disposition for her arrest in 1995 for petit larceny.

On appeal, counsel acknowledges that the applicant failed to respond to the director's NOID within the time provided. Council argues that although the failure to respond to an evidence request is grounds to deny TPS, that status may not be withdrawn on that ground alone. Council states that the director found that the record "appears" to establish that the applicant, using the name [REDACTED] was arrested for petty larceny in Las Vegas. Counsel submits a letter dated July 3, 2007, from the Deputy Clerk of the Justice Court of Las Vegas Township indicating that no records were found within the court under a defendant name of [REDACTED]

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for TPS if the 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 that 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. Section 244(c)(2)(B)(i) of the Act and the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1(3) define "felony" and "misdemeanor" as:

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 record reflects the following offenses:

- (1) On June 1, 1990, the applicant was convicted of burglary by a Judge of the Superior Court, North Division, Shafter Branch, of the State California in and for the County of Kern, a misdemeanor. (Case No. § [REDACTED])

- (2) The applicant's Federal Bureau of Investigation (FBI) fingerprint results report shows that on October 19, 1990, she was arrested under the name [REDACTED] by the Garden Grove Police Department in California, for petty theft. (Agency Case [REDACTED])
- (3) The applicant's FBI fingerprint results report shows that on December 19, 1995, she was arrested under name [REDACTED] by the North Las Vegas Police Department in Nevada and charged with first degree petit larceny. (Agency Case [REDACTED])

In this case, the director requested the applicant furnish a final court disposition for her arrest in 1995 for petit larceny (Item #3 above). In response, counsel submits a letter dated July 3, 2007, from the Deputy Clerk of the Justice Court of Las Vegas Township indicating that no records were found within the court under a defendant name of [REDACTED]. This document is of little probative value in this proceeding as the Deputy Clerk was evidently requested to provide a court disposition for an arrest(s) using the person's alias and not the name under which he or she would have been convicted.

On appeal, counsel acknowledges that the applicant failed to respond to the director's NOID within the time provided. Counsel argues that although the failure to respond to an evidence request is grounds to deny TPS, that status may not be withdrawn on that ground alone. Counsel's assertion is not persuasive. By failing to provide evidence necessary for the adjudication of her application the applicant became ineligible for TPS pursuant to 8 C.F.R. § 244.9(a).

The applicant is ineligible for temporary protected status because of her failure to provide information necessary for the adjudication of her application (Items # 2 and # 3 above). 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw TPS is affirmed.

Furthermore, the applicant has provided insufficient evidence to establish that she is a national or citizen of El Salvador. She has provided a copy of her birth certificate along with an English translation. However, a birth certificate alone does not establish nationality. The record does not contain any photo identification such as a passport or national identity document. 8 C.F.R. § 244.2(a) and § 244.9(a)(1). Consequently, TPS shall be withdrawn for this additional reason.

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.