

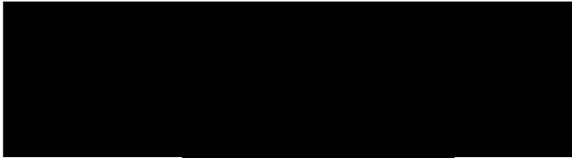


U.S. Citizenship  
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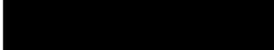
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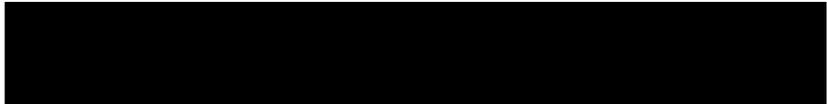
OFFICE: VERMONT SERVICE CENTER

DATE:

JAN 16 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:

SELF-REPRESENTED

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 Director, Vermont Service Center, withdrew the applicant's Temporary Protected Status (TPS) and simultaneously denied his application for re-registration. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant claims to be a citizen of El Salvador who is seeking TPS under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined 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. 8 C.F.R. § 244.14(a)(1).

The record reveals that the director determined that the applicant had abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. 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 director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, the applicant submits the requested documentation and requests the continued processing of his TPS request.

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).

The regulation at 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.  
8 C.F.R. § 244.1.

The record revealed that the applicant had been convicted in the Houston County Criminal Court of possession of less than two ounces of marijuana and using an illegal license/certification. By a Notice of

Intent to Deny (NOID) dated November 15, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not respond to the NOID.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on July 26, 2007.

On appeal, the applicant submits a certificate of disposition of his criminal history from the Harris County (Texas) District Court.

The certification reflects the following offenses:

1. On November 10, 2006, the applicant was convicted of driving while his license was suspended (cause no. [REDACTED]). He was sentenced to ten days in jail and ordered to pay a \$100 fine. This offense is a class "B" misdemeanor under Texas law.
2. On January 24, 2006, the applicant was convicted of possession of a fictitious license/certificate (cause no. [REDACTED]). He was sentenced to five days in jail. This offense is a class "A" misdemeanor under Texas state law.
3. On December 6, 2005, the applicant was convicted of possession of two ounces or less of marijuana (cause no. [REDACTED]). He was sentenced to five days in jail and fined \$500. This offense is a class "B" misdemeanor under Texas state law.

The record reveals that the applicant has been convicted of three misdemeanors. The applicant is therefore ineligible for TPS due to his conviction of two or more misdemeanors in the United States. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

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.