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U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: JAN 16 2008
[SRC 03 023 55708]

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 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 disapproved 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 Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the applicant's TPS and denied his application for re-registration for abandonment because he found that the applicant had failed to submit requested court documentation relating to his criminal record. 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 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. 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 However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application,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 states that he did not receive the director's notice of intent to withdraw his TPS.

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 Federal Bureau of Investigation criminal history reveals the following offenses:

1. On July 5, 2000, the applicant was convicted as a first offender of driving while intoxicated.
2. On June 1, 2004, the applicant was convicted as a second offender of driving while intoxicated.

Pursuant to a letter dated August 11, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not submit a response to the request.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application. Consequently, he withdrew the applicant's TPS and denied the application for re-registration as abandoned.

On appeal, the applicant denied receiving the director's notice of intent to withdraw his TPS. The applicant submits the following documentation in support of his appeal:

1. A July 19, 2007, letter from the Houston Police Department. The letter indicated that the applicant had been convicted on July 5, 2000 for driving while intoxicated.
2. A July 18, 2007, letter from the Harris County District Clerk, certifying that a criminal record search revealed no charges against the applicant. The letter indicated that the search was conducted using the applicant's name, date of birth and social security number.

The applicant has failed to provide any evidence revealing the final court disposition of his June 2004 conviction as detailed above. We note that while the July 18, 2007, letter from the Harris County District Court indicated the applicant had no record with the court, it contradicts a September 3, 2002, letter from the court certifying the applicant's 2000 conviction for driving while intoxicated. Additionally, the letter conflicts with the letter from the Houston Police Department also certifying the 2000 conviction.

The applicant is ineligible for TPS 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.

An alien applying for TPS 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.

We note that the record contains a Form I-205, Warrant of Removal /Deportation, dated July 21, 2000.

ORDER: The appeal is dismissed.