

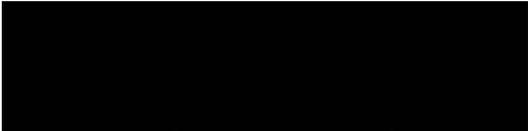


U.S. Citizenship
and Immigration
Services

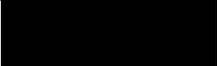
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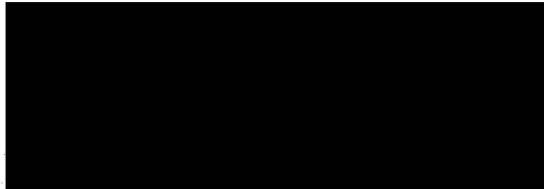
Office: CALIFORNIA SERVICE CENTER

Date: JUL 29 2008

[WAC 05 210 73999,
as it relates to WAC 01 240 57427]

IN RE:

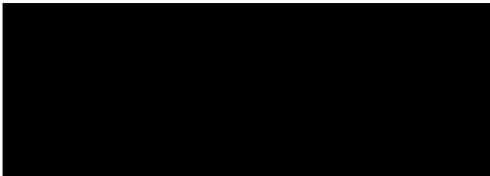
Applicant:



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 office that originally decided your case. 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DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn and the application for re-registration was denied by the Director, California Service Center (CSC). The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is stated 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 record reveals that the applicant filed an initial TPS application on May 31, 2001, under receipt number WAC 01 240 57427. The CSC director approved TPS on December 29, 2003.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 28, 2005, under CIS receipt number WAC 05 210 73999, and indicated that he was filing a registration application for TPS.

The CSC director subsequently withdrew the applicant's TPS on August 25, 2006, when it was determined that the applicant had failed to submit evidence of the final disposition of an arrest which had been requested in a March 27, 2006 Notice of Intent to Withdraw TPS. The director also found that the failure to timely and adequately respond to the notice constitutes a failure to re-register for TPS. The applicant filed the current appeal on October 4, 2006.

The director may withdraw the status of an alien granted temporary protected status under section 244 of the Act at any time if it is determined that "the alien was not in fact eligible for such status" or if "the alien fails, without good cause, to re-register ... in a form and manner specified by" the Secretary. The Regulations under 8 C.F.R. § 244.14(a)(1) and (3) further states that the director may withdraw the status of an alien granted TPS if, "the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status," or if, "the alien fails without good cause to re-register".

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.

On March 27, 2006, the director notified the applicant that his TPS would be withdrawn because the record reflected that he had been arrested on March 29, 2005, on a charge of counterfeiting by the Saint Paul, Minnesota Police Department, and therefore may be ineligible for TPS. The notice also requested the applicant to submit the final court disposition of this arrest.

The applicant's response was received on April 17, 2006, and included a certification signed under penalty of perjury that he had not been convicted of any felony or two more misdemeanors committed in the United States. The applicant also submitted a criminal history record from the Minnesota Department of Public Safety indicating that he was arrested on March 29, 2005, but the charge was "Unknown" and the highest conviction level was "Not Determined."

The director concluded that the applicant's response failed to provide the final court disposition of his arrest. On appeal, counsel argues that the applicant was never prosecuted based on the arrest; therefore, he could not provide the final court disposition related to the arrest, since it does not exist.

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). To prevail on this question, the applicant must show, with an official letter, such as a letter from the relevant criminal court, that the requested evidence is unavailable and then submit relevant "secondary evidence." If the applicant cannot submit secondary evidence, he must establish, with an official letter, that secondary evidence is unavailable, and then submit at least two affidavits from persons who are not party to the application and who have direct knowledge of the event and circumstances. In criminal record cases, acceptable affidavits are from the prosecuting attorney, the defense attorney, the judge, or some other individual (other than derivative family members) who has had direct knowledge of the disposition of the arrest.

Any letter that is submitted to show that a criminal record is unavailable must be: (1) an original (i.e. no copies), (2) on letterhead, and (3) from the relevant government authority that serves as the custodian of records, 8 C.F.R. § 103.2(b)(2)(ii). The government letter must indicate the reason the record does not exist and also indicate whether similar records for the time and place are available.

The applicant has failed to submit requested final court disposition, as requested, and has failed to meet the above requirements. Therefore, the director's decision to withdraw TPS for this reason is affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish his nationality and identity. It is noted that although the record of proceedings contains an El Salvador birth certificate and English translation, the certificate was not accompanied by a photo identification to establish the applicant's nationality and identity as required by 8 C.F.R. § 244.9(a)(1). In addition, the applicant has not submitted sufficient evidence to establish his continuous residence in the United States from February 13, 2001 and his continuous physical presence since March 1, 2001. For these additional reasons, the application must be denied.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 met this burden.

ORDER: The appeal is dismissed.