

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 01/10/01 BY 60322 UCBAW

PUBLIC SCOPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

M1

[REDACTED]

FILE:

[REDACTED]

[WAC 01 180 55442]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: AUG 01 2005

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 office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal 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 after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

On appeal, the applicant states that he did answer the director's request, and that he has submitted all the evidence and documents requested.

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).

Because the Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant has records of arrests, the applicant was requested, on March 17, 2004, to submit the final court dispositions of any and all arrests. The record did not contain the applicant's response; therefore, the director concluded that the applicant had abandoned his application and denied the application on June 15, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for additional evidence by furnishing a letter dated April 14, 2004, from the Superior Court of the San Fernando Branch, California, indicating that a thorough search of the criminal/traffic index for that court had been made and no record was found regarding [REDACTED]. The document was received by the California Service Center on April 21, 2004, prior to the director's decision. Therefore, the director's finding that the applicant abandoned his application will be withdrawn, and a decision will be made based on the evidence of record.

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).

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.

An alien is inadmissible if he has been convicted of a crime involving moral turpitude (other than a purely political offense), or if he admits having committed such crime, or if he admits committing an act which constitutes the essential elements of such crime. Section 212(a)(2)(A)(i)(I) of the Act.

The FBI report reveals the following offenses:

- (1) On May 22, 1997, in Los Angeles, California, the applicant was arrested for "appropriate lost money."
- (2) On December 22, 2001, in Los Angeles, California, the applicant (name used: [REDACTED]) was arrested for driving under the influence of alcohol/drugs.

The director determined that the applicant had failed to submit the final court disposition of his arrests as requested on March 17, 2004, and denied the application on June 15, 2004.

On appeal, the applicant asserts that he has complied with the director's request. The applicant submits: (1) a copy of the April 14, 2004, letter from the Superior Court of the San Fernando Branch, California (previously addressed above); (2) a letter dated June 22, 2004, from the Superior Court of California, County of Los Angeles, indicating that no record was found regarding [REDACTED] and (2) the California Department of Motor Vehicles (DMV) Form K-4 report reflecting no arrest record regarding [REDACTED]

It is noted that the only information used by the courts to search their records is the applicant's name. There is no evidence that the arrest information, such as the date and place of arrest and offense, and other pertinent information, were used for the search. Further, there is no evidence that the applicant's case was heard at these courts. It may be assumed that the applicant would have known where his cases were heard. Additionally, it is noted that at the time the applicant was arrested, he used the name [REDACTED]. The letters from the courts and the DMV report do not show that a search of their records were made under this name. Furthermore, it is noted that the California DMV Form K-4 computer listing is purged of minor offenses after three years. Therefore, the fact that the offense in No. 2 above is not reflected on the DMV printout does not mean that the applicant was not convicted.

The applicant has failed to provide the final court disposition of his arrests detailed in Nos. 1 and 2 above. The applicant is ineligible for temporary protected status because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a).

The record contains a Warrant of Deportation, Form I-205, issued in Los Angeles, California, on April 11, 1996, based on the final order of removal by an immigration judge on February 20, 1996. The applicant failed to appear at the Los Angeles district office on May 7, 1996, for his enforced departure.

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.