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**U.S. Citizenship
and Immigration
Services**

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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: **AUG 12 2005**

[WAC 01 283 57850]

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 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 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 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 is going to be a good citizen and he is going to send other papers. He submits additional evidence.

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 November 7, 2002, to submit the final court dispositions of any and all arrests, including the arrests listed on the FBI report. The director noted that the applicant responded by submitting the final disposition of one arrest; however, the applicant failed to submit the final court disposition of all arrests listed. The director concluded that the applicant had abandoned his application and denied the application on August 21, 2003.

The record of proceeding, however, shows that the applicant did respond to the director's notice of request for evidence. The document was received by the California Service Center on June 16, 2003, 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.

An alien is inadmissible if he has been convicted of, or admits having committed, or admits committing acts which constitute the essential elements of a violation of (or a conspiracy to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802). Section 212(a)(2)(A)(i)(II) of the Act.

Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and

regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible. Section 212(a)(2)(B) of the Act.

An alien is inadmissible if a consular officer or immigration officer knows or has reason to believe he is or has been an illicit trafficker in any such controlled substance. Section 212(a)(2)(C) of the Act.

The record reveals the following offenses:

- (1) The FBI report shows that on March 31, 1995, in Reno, Nevada, the applicant was arrested for Count 1, possession of a stolen property; Count 2, accessory to felony; and Count 3, burglary. The court's final disposition of this arrest is not contained in the record.
- (2) The FBI report shows that on March 8, 1996, in Reno, Nevada, the applicant was arrested for Count 1, unlawful use of a controlled substance; and Count 2, under the influence of a controlled substance.
- (3) The FBI report shows that on March 30, 1996, in Reno, Nevada, the applicant was arrested for driving under the influence. The records of the Washoe County Sheriff's Office also shows that on March 30, 1996, under Case No. [REDACTED] the applicant was booked and charged with Count 1, driving under the influence of alcohol; Count 2, driver's license required; and count 3, failure to drive within traffic lane. However, the court's final disposition of this arrest is not contained in the record.
- (4) The FBI report shows that on December 22, 1996, in Sparks, Nevada, the applicant was arrested for Count 1, conspiracy to burglary; and Count 2, contributing to the delinquency of a minor. The records of the Washoe County Sheriff's Office also shows that on December 22, 1996, under Case No. [REDACTED] applicant was booked and charged with these two offenses. Additionally, the applicant submitted a Notice of Disposition from the Office of the District Attorney, Washoe County, Reno, Nevada. This report was certified by the Sparks Police Department indicating that the applicant entered a plea of guilty to two counts of contributing to the delinquency of a minor. However, the actual final court disposition of this arrest is not contained in the record.
- (5) The FBI report and the records of the Washoe County Sheriff's Office both show that on February 27, 2001, in Reno, Nevada, the applicant was arrested for Count 1, burglary; and Count 2, conspiracy to commit a crime. The final court disposition of this arrest is not contained in the record.
- (6) The records of the Washoe County Sheriff's Office shows that on May 6, 2001, the applicant was booked and charged with disturbing the peace, and that he was subsequently convicted and sentenced to 30 days in jail. However, the actual final court disposition of this arrest is not contained in the record.
- (7) The records of the Washoe County Sheriff's Office shows that on October 8, 2002, the applicant was booked and charged with Count 1, carrying a concealed weapon; Count 2, battery with a deadly weapon; Count 3, failure to appear after admission bail; Count 4, "hold for outside agency;" and count 5, challenge to fight with weapon. The court's final disposition of this arrest is not contained in the record.

The applicant has failed to provide the final court dispositions of his arrests detailed in Nos. 1, 2, 3, 4, 5, 6, and 7 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 FBI report further shows that the applicant, under the name [REDACTED] was placed in removal proceedings on February 21, 1996, in Reno, Nevada.

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.