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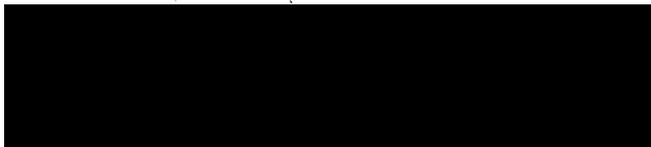
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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: AUG 29 2005
[WAC 01 222 51672]

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:



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, counsel asserts that Citizenship and Immigration Services (CIS) erred in denying the TPS application when the applicant had sought to comply, and had substantially complied, with the request for further 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).

The Federal Bureau of Investigation (FBI) fingerprint results report shows that the applicant was arrested on October 1, 1986, in Los Angeles, California, for "ASSAULT WITH FIREARM ON PERSON." Therefore, the applicant was requested on November 20, 2003, to submit a certified final court disposition of this arrest, including court dispositions for all other arrests. The director noted that the applicant failed to submit all requested documentation and concluded that the applicant had abandoned his application, and denied the application on February 13, 2004.

The record of proceeding, however, shows that the applicant did respond to the director's request for evidence. The response was received by the California Service Center on January 23, 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 record reveals the following offenses:

- (1) On June 9, 1988, in the Municipal Court of Los Angeles, Central Arraignment Judicial, County of Los Angeles, California, Case No. [REDACTED] (arrest date May 20, 1988), the applicant was indicted for possession of open bottle of alcohol, in violation of 41.27(h) LAM, a misdemeanor. On June 14, 1988, the court terminated proceedings.

- (2) A criminal history record search made by the Superior Court of California, County of Los Angeles, on March 19, 2004, indicated that the following criminal case was found: Case Number [REDACTED] first court date October 3, 1986; Charges 417(a)(2) PC [brandishing or using a deadly weapon other than firearm, a misdemeanor]; court location "CAC." The record search letter advised that the appropriate court be contacted to obtain copies of the case file. It is not clear in the record whether this arrest relates to No. 3 below. No final court disposition was furnished for this offense.
- (3) On October 1, 1986, in Los Angeles, California, the applicant was arrested for assault with firearm on a person, 245(a)(2) PC, a felony (Case No. [REDACTED]). The final court disposition of this arrest is not contained in the record; instead, the applicant submits a letter from the Superior Court of California, County of Los Angeles, dated June 7, 2004, indicating that a transcript for October 1, 1986, cannot be prepared because the court reporter's notes have been destroyed according to Section 69955 of the Government Code. Attached to this letter is an "Order Authorizing Destruction of Court Reporters Notes" dated July 22, 1994, ordering that the court reporting notes taken prior to January 1, 1984, may be destroyed effective January 1, 1994, and to periodically destroy the court reporting notes filed with him (Presiding Judge) ten years after the taking of the notes.

The letters regarding the destruction of court reporter's "notes," however, does not indicate that the destruction included court dockets and conviction records. Furthermore, destruction of court reporter's notes, or court records, is not evidence that the applicant was not convicted of the offenses detailed in Nos. 2 and 3 above.

The applicant has failed to provide evidence revealing the final court disposition of his arrests detailed in Nos. 2 and 3 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).

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.