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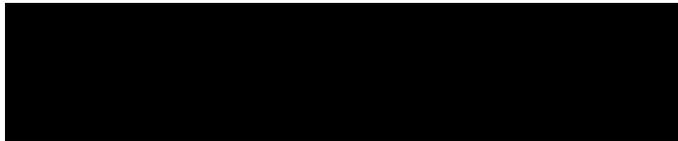


FILE: [REDACTED]
[WAC 01 145 50681]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: JUL 15 2005

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 final court dispositions of all arrests.

On appeal, the applicant states that he did submit the requested final court dispositions, and that he is resubmitting copies of the dispositions.

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 director noted that the applicant furnished an insufficient response to his request; therefore, the director concluded that the applicant had abandoned his application and denied the application on May 18, 2004.

The record of proceeding, however, shows that the applicant did respond to the applicant's request for evidence by submitting the court disposition of his October 26, 2003 arrest. The document was received by the California Service Center on March 31, 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.

The record reveals the following offenses:

- (1) On April 7, 2003, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date April 6, 2003), the applicant was indicted for Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; and Count 3, unlicensed driver, 12500(a) VC, a misdemeanor. On April 7, 2003, the applicant was convicted of Count 2. He was placed on probation for a period of 36 months, ordered to spend 48 hours in the county jail, pay \$1544 in fines and costs, enroll and successfully complete a 3-month first-offender alcohol and other drug education and counseling program, and his driving was restricted for 90 days. Counts 1 and 3 were dismissed.

- (2) On December 4, 2003, in the Superior Court of California, County of Los Angeles, Case No. [REDACTED] (arrest date October 26, 2003), the applicant was indicted for Count 1, driving under the influence of alcohol, 23152(a) VC, a misdemeanor; Count 2, driving with .08 percent blood alcohol level or more, 23152(b) VC, a misdemeanor; Count 3, driving with suspended or revoked license, 14601.5(a) VC, a misdemeanor; and Count 4, unlicensed driver, 12500(a) VC, a misdemeanor. On January 14, 2004, the applicant was convicted of Count 2. He was placed on probation for a period of 60 months under the condition that he serve 73 days in the county jail, ordered to pay \$490 in fines and costs, and enroll and successfully complete a 18-month licensed second-offender alcohol and other drug education and counseling program. Counts 1, 3, and 4 were dismissed.
- (3) The FBI report shows that on January 16, 2004, in Norwalk, California, the applicant was arrested for driving with .08 percent blood alcohol level or more. The applicant failed to submit the final court disposition of this arrest.

The applicant is ineligible for TPS due to his two misdemeanor convictions, detailed in Nos. 1 and 2 above, and because he failed to provide the final court disposition of his arrest detailed in No. 3 above. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application for this reason will be affirmed.

Beyond the decision of the director, the record of proceeding does not contain the applicant's birth certificate and picture identification to establish his nationality and identity, pursuant to 8 C.F.R. § 244.9(a)(1). Therefore, the application must also be dismissed for this reason.

It is noted that the record contains an outstanding Warrant of Deportation, Form I-205, issued on August 9, 1996, and that the applicant failed to appear at the Los Angeles district office on September 4, 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.