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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
[WAC 01 184 51733]

OFFICE: CALIFORNIA SERVICE CENTER DATE: MAY 05 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. The application 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 submits a statement and additional evidence.

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 offense:

On January 8, 2001, the applicant was convicted in the Municipal Court of Whittier Judicial District, County of Los Angeles, State of California, of driving with a suspended license in violation of section 14601.1(a) VC, a misdemeanor, and one count of giving false information to a peace officer in violation of section 31 VC, a misdemeanor. (Date of arrest: December 13, 2000; Docket Number [REDACTED])

Pursuant to a letter dated February 26, 2003, the applicant was requested to provide additional evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. He was also requested to provide the final court disposition of a bench warrant relating to his arrest on December 13, 2000.

The director erroneously denied the application due to abandonment, stating that the applicant had failed to respond to the request for evidence.

The applicant did, in fact, respond to the notice on March 14, 2003. In his response, the applicant provided two Notices to Appear issued to him on December 13, 2000 and December 14, 2000, respectively. In the Notice to Appear dated December 13, 2000, the applicant was charged with driving with a brake light out in

violation of section 24252(b) VC, an infraction; driving with a suspended driver's license in violation of section 14601.1(a) VC, a misdemeanor; and, driving without proof of insurance in violation of section 16028(a) VC, an infraction. In the Notice to Appear dated December 14, 2000, the applicant was charged with providing false information to a peace officer in violation of section 148.9 PC, a misdemeanor. The applicant did not, however, provide the final court disposition of his arrests, nor did he provide any additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite time frames.

On appeal, the applicant states that he never received the notice requesting additional evidence. He states, "[p]lease reconsider your decision because the failure to respond was not my intention." The applicant submits additional evidence in an attempt to establish his qualifying continuous residence and continuous physical presence in the United States. He also provides the final court disposition of his arrest on December 13, 2000. According to the court disposition documents submitted on appeal, the applicant was convicted in the Municipal Court of Whittier Judicial District, of one count of driving with a suspended license in violation of section 14601.1(a) VC, a misdemeanor, and one count of giving false information to a peace officer in violation of section 31 VC, a misdemeanor.

The applicant is ineligible for TPS due to his record of two misdemeanor convictions, detailed above. 8 C.F.R. § 244.4(a). Consequently, the director's decision to deny the application will be affirmed.

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.