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FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE: APR 09 2007

[WAC 05 189 71391 as it relates to WAC 01 222 51672]

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:



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.

Cindy N. Gomez for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) 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 record reveals that the applicant filed a TPS application during the initial registration period under Citizenship and Immigration Services (CIS) receipt number WAC 01 222 51672. The director denied that application on February 13, 2004, after determining that the applicant had abandoned his application based on his failure to respond to a request to submit the requested final court dispositions of his arrests.

On March 15, 2004, the applicant filed an appeal from the denial decision. The AAO reviewed the record of proceeding and the evidence furnished and noted that the applicant did respond to the director's request for evidence; therefore, the director's finding that the applicant abandoned his application was withdrawn, and a decision was made based on the evidence of record. The AAO noted that the applicant:

(1) was charged on October 3, 1986, under [REDACTED] 417(a)(2) PC [brandishing or using a deadly weapon other than firearm, a misdemeanor], court location "CAC." A record search letter from the Superior Court of California, County of Los Angeles, advised that the appropriate court be contacted to obtain copies of the case file. No final court disposition was furnished for this offense; and

(2) was arrested on October 1, 1986, for assault with firearm on a person, 245(a)(2) PC, [REDACTED]. The final court disposition of this arrest was not contained in the record; instead, the applicant submitted a letter from the Superior Court of California, County of Los Angeles, dated June 7, 2004, indicating that "a transcript for the data you wish to be transcribed, October 1, 1986, cannot be prepared" because "the court reporter's notes have been destroyed according to Section 69955 of the Government Code."

The AAO concluded that the letter regarding the destruction of court reporter's "notes," however, did not indicate that the court dockets and the conviction records were included in the destruction and that, furthermore, the destruction of court reporter's notes, or court records, was not evidence that the applicant had not been convicted of the charges. The AAO, therefore, dismissed the appeal on August 29, 2005.

The applicant filed the current Form I-821, Application for Temporary Protected Status, on April 7, 2005 [WAC 05 189 71391], and indicated that he was re-registering for TPS.

The director denied the re-registration application on September 30, 2005, because the applicant's initial TPS application had been denied and the applicant was not eligible to apply for re-registration for TPS.

If the applicant is filing an application as a re-registration, a previous grant of TPS must have been afforded the applicant, as only those individuals who are granted TPS must register annually. In addition, the applicant must continue to maintain the conditions of eligibility. 8 C.F.R. § 244.17.

On appeal, counsel asserts that although the applicant was arrested, he was never convicted of a crime and is unable to prove innocence because of the government's destruction of records. He submits a statement from the applicant, and another letter from the State of California, Department of Justice, indicating that on July 13, 2004, a response was received regarding the applicant's arrest on October 1, 1986, for assault with

firearm on person, PC 245(a)(2), stating "disposition information unavailable." Counsel also resubmitted copies of a criminal history search relating to the applicant's arrests for 245(a)(2) PC and 417(a)(2) PC, indicating that the cases were destroyed. She stated that the applicant has diligently complied with the director's requests by providing several certified court documents attesting to the destruction of records pertaining to the applicant's case(s).

The applicant, on appeal, has not overcome the original findings of the AAO. Despite counsel's assertion on appeal that the applicant subsequently went to the court and was found not guilty of 245(a)(2) PC, the evidence provided fails to support this assertion. Nor was a copy of the arrest report or a certified letter from the State or District Attorney submitted as evidence that the applicant was not prosecuted or that the case was not filed with the court, and/or he was not convicted of these offenses. Furthermore, as previously stated by the AAO, destruction of court records is not evidence that the applicant was not convicted of the charges for 245(a)(2) PC and 417(a)(2) PC under California statute.

In this case, the applicant has not previously been granted TPS. Therefore, he is not eligible to re-register for TPS. Consequently, the director's decision to deny the application will be affirmed.

The application will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.