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U.S. Citizenship  
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MI

FILE: [REDACTED]

OFFICE: CALIFORNIA SERVICE CENTER

DATE: **JUL 30 2007**

[SRC 01 179 55884]  
[WAC 05 212 72427]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The applicant's Temporary Protected Status was withdrawn by the Director, California Service Center, and the case is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254, on November 26, 2001. The director subsequently withdrew the applicant's TPS status on August 3, 2006, when it was determined that the applicant had failed to respond to a notice of intent to withdraw (ITW), dated January 11, 2006, requesting that he submit the final court dispositions of all of his arrests, including his arrest listed on the Federal Bureau of Investigation fingerprint results report. Within the same decision, the director denied the applicant's re-registration application, filed on April 30, 2005, under Citizenship and Immigration Services (CIS) receipt number WAC 05 212 72427, because the applicant had abandoned his re-registration application based on his failure to respond to the ITW.

The director may withdraw the status of an alien granted TPS at any time if it is found that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. Section 244(c)(3)(A) of the Act and 8 C.F.R. § 244.14(a)(1).

On appeal, the applicant asserts that he never received the letter requesting for additional evidence although he had made a change of address with CIS.

The record of proceeding, however, shows that the applicant did respond to the director's ITW. The applicant furnished the indictment record for his arrest for possession of cocaine. The response was received at the California Service Center on February 3, 2006, 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.

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. 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 indicates that on September 10, 2004, in the Circuit Court of the Eleventh Judicial Circuit, Miami-Dade County, Florida, Case No. [REDACTED] (arrest date August 22, 2004), the applicant (name used: [REDACTED]) was indicted for "possession of cocaine," Florida Statute 893.13(6)(a), a felony.

The applicant submits, on appeal, a statement from the Clerk of the Circuit and County Court of the Eleventh Judicial Circuit certifying that a diligent examination of the felony files and records in his office regarding the applicant indicates: (1) Case No. [REDACTED] arrest date August 22, 2004, for possession of cocaine, was *nolle pros* on August 16, 2006; (2) Case No. F04025634, arrest date August 22, 2004, for possession of cocaine, was "TRANSF TO OTHER CA" on September 3, 2004. The Clerk further indicates that "[p]ursuant to Florida Rules of Court (Rule 2.075), the retention of court records, the requirement for retaining misdemeanor cases is 5 years, and felony cases (not adjudicated guilt) is 10 years. Therefore, the above file(s) is/are unavailable if any of them have an applicable disposition date." It is noted, however, that case number [REDACTED] was *nolle pros* on August 16, 2006 (approximately 2 years after the indictment), and case number [REDACTED] was transferred on September 13, 2004, well within the 5 years/10 years retention period. The applicant also submits a copy of an application "for expunction" of the charge for "cocaine/possession." The application was signed by the Clerk of the Court and dated August 18, 2006.

The fact that the applicant's records may have been destroyed does not mean the applicant was not convicted of the above charges. Additionally, Congress has not provided any exception for aliens who have been accorded rehabilitative treatment under state law. State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

The applicant has failed to provide the requested final court disposition of his arrest and indictment detailed above. The applicant is, therefore, ineligible TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Consequently, the director's decision to withdraw the applicant's temporary protected status 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.