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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:



[SRC 02 034 53047]  
[WAC 05 209 81059]

OFFICE: California Service Center

DATE:

MAY 08 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, withdrew the applicant's previously granted Temporary Protected Status and denied the application for re-registration. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The applicant is a 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 withdrew the applicant's previously approved TPS and denied his re-registration application because the applicant failed to respond to a notice of intent to withdraw (NOIW) requesting evidence of the final disposition(s) of two criminal arrests.

On appeal, counsel acknowledges that the applicant was convicted of DUI (driving under the influence) and submits the final court disposition of the charge, along with a certificate of the applicant's completion of a DUI risk reduction program.

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.  
8 C.F.R. § 244.1.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). See 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. See 8 C.F.R. § 244.9(b).

The record reveals that the applicant, who was initially granted TPS on April 19, 2002, pursuant to an application filed in October 2001, filed the current application for re-registration of TPS on February 25, 2005. On April 11, 2006, the director issued a Notice of Intent to Withdraw (NOIW) the applicant's TPS based on Citizenship and Immigration Services (CIS) records indicating that the applicant had been arrested twice by the Hendry County Sheriff's Office: (1) on February 4, 2001, on the charge of driving under the influence of alcohol or drugs; and (2) on February 11, 2002, on the charge of contempt of court. The applicant was requested to submit evidence of the final court disposition(s) of these arrests, and any other arrests, within 30 days.

After the applicant failed to respond to the NOIW, the director issued a Notice of Withdrawal of TPS, combined with a Notice of Decision to Deny TPS Re-Registration, on August 4, 2006. The director withdrew the applicant's previously granted TPS for failure to comply with the re-registration requirements specified by CIS, citing the regulations at 8 C.F.R. § 244.14(a)(3) and 8 C.F.R. § 244.17(c). The director also denied the

re-registration application for failure to provide the final court dispositions for any and all criminal arrests/convictions, which constituted an abandonment of the application under 8 C.F.R. § 244.9(c).

On appeal, counsel asserts that the applicant "never received the denial you are referring to." The AAO notes, in this regard, that both the NOIW as well as the decision withdrawing TPS and denying re-registration were sent to the applicant's last known address, which is also his current address. Counsel also states that "the charge of DUI is correct" and submits a court record and the applicant's certificate of completion of a DUI class. The court record submitted on appeal, from Calhoun County Municipal Court in Georgia, relates to an arrest of the applicant on July 12, 2005, by the Calhoun Police Department, on a charge of DUI. The applicant pleaded guilty to the DUI charge on September 26, 2005, and was sentenced to 12 months probation, one day in jail, and 40 hours of participation in a DUI, Alcohol or Drug Risk Reduction Program. A certificate of completion issued by the Georgia Department of Human Resources confirms that the applicant completed the program on February 26, 2006.

The foregoing DUI conviction, however, is separate and apart from the two earlier arrests in Hendry County cited in the NOIW that was sent to the applicant on April 11, 2006. Thus, the applicant still has not submitted the final court disposition(s) of his DUI arrest on February 4, 2001, and his contempt of court arrest on February 11, 2002. Accordingly, he has not overcome the grounds cited by the director for the withdrawal of his previously granted TPS and the denial of his re-registration application. The director's decision will therefore 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.