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**U.S. Citizenship  
and Immigration  
Services**

*M1*

[REDACTED]

FILE:

[REDACTED]

OFFICE: California Service Center

DATE: AUG 05 2008

[WAC 05 225 81979]

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 California Service Center. Any further inquiry must be made to that office.

for Robert P. Wiemann, Chief  
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 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 on May 22, 2001, under receipt number SRC 01 218 55064. On April 29, 2003, the applicant was requested to submit evidence establishing his continuous residence and continuous physical presence in the United States during the qualifying periods. On August 26, 2003, the Director, Texas Service Center (TSC), denied that application due to abandonment because the applicant failed to respond to the request for additional evidence. On October 9, 2003, the applicant filed a motion to reopen and reconsider which was granted by the TSC director on November 4, 2004. The director determined that the applicant had submitted sufficient evidence to overcome the grounds of the original denial. The director also informed the applicant that he would be notified of a time and date to appear for fingerprinting. On February 15, 2005, the TSC director denied the TPS application for a second time because the applicant failed to appear for his scheduled fingerprinting appointment.

The applicant filed the current TPS application on March 11, 2005, under CIS receipt number WAC 05 225 81979. The Director, California Service Center (CSC), denied the re-registration application on September 6, 2005 due to abandonment because the applicant failed to appear for collection of his biometrics. The applicant was informed that a denial due to abandonment may not be appealed; however, the applicant could have filed a motion to reopen within 30 days from the date of the denial. On November 7, 2005, the applicant submitted a motion to reopen which was denied by the director CSC, after he determined that the applicant has been convicted of two or more misdemeanors or a felony. The director also noted that the applicant has failed to submit a final court disposition regarding his arrest on December 17, 2002, by the San Marcos Police Department, and charged with (1): Robbery.

On appeal, the applicant claimed in his July 11, 2006 statement that he has not obtained the final court disposition for the case dated December 17, 2005, from the Court in San Marcos, Texas, because it is still in process. He indicated he would provide a copy of the final disposition, however, he has not done so.

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 June 25, 2004, the applicant was arrested by the Houston Police Department, Agency Case No. [REDACTED], and charged with (1) – 001 Count of Driving While Intoxicated. On July 30, 2004, in the District Court County Criminal Court at Law No. 12 of Harris County, Texas, the applicant entered the plea of Nolo Contendre. He was placed in the Harris County Jail for ten days, ordered to pay \$326 in fines, and had his driver's license suspended for a period of one year.
- (2) On June 5, 2006, Offense Report No. [REDACTED], Court Case No. [REDACTED], the applicant was charged with Count 001 of Evading Arrest with Motor Vehicle. On July 6, 2006, the applicant entered the plea of guilty. He was committed to 180 days in Harris County Jail.
- (3) On December 17, 2005, the applicant was arrested by the San Marcos Police Department, Agency Case No. [REDACTED] and charged with (1) – Robbery. The final court disposition for this case; however, is not contained in record.

It is noted on appeal, the applicant submits a statement from a Bali Bonds, Hays County, dated July 21, 2006, informing him that his case, regarding the charge of Robbery, has been reset to October 16, 2006, with the Hays County District Court for the purpose of Jury Trial. The applicant has not submitted the final court disposition for this arrest. CIS must address this charge in any future proceeding.

The applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his convictions outlined above. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Consequently, the director's decision to deny the application for this reason 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.