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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: VERMONT SERVICE CENTER DATE: FEB 21 2008
[EAC 01 160 55293]

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:
[REDACTED]

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center, and an application for re-registration was denied due to abandonment by the Director, Vermont Service Center. The matter 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 director determined that the applicant had abandoned his re-registration application by failing to submit the requested court records pertaining to his criminal history. The director withdrew the applicant's TPS pursuant to 8 C.F.R. § 244.14(a)(3) because the applicant had failed to successfully re-register. However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application, had become ineligible for TPS.

On appeal, counsel asserts that if the director was not satisfied with the documentation submitted for the applicant's October 17, 2004, arrest he should have sent another notice to the applicant. Counsel provides the requested final court disposition for the applicant's arrest on October 17, 2004.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined 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).

An alien shall not be eligible for temporary protected status 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).

"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. 8 C.F.R. § 244.1.

"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.

On January 28, 2004, the applicant was requested to submit the final court dispositions of every charge against him. The applicant, in response, submitted the following:

- Court documentation indicating on or about September 24, 2000, the applicant was arrested and subsequently charged in the Fairfax County (Virginia) General District Court with driving while intoxicated, a violation of section 18.2-266.
- A letter dated May 24, 2001, in the Spanish language from the Nineteenth General District Court in Fairfax County, Virginia in Case no [REDACTED]

- A Personal Property Receipt signed September 24, 2000, and a Alexandria Detention Center Inmate Request Form.
- A Certificate of Blood Alcohol Analysis conducted on September 24, 2000.
- A Fairfax County Alcohol Safety Action Program (ASAP) Payment Agreement in which the applicant agreed to pay an ASAP fee of \$350.00 by December 27, 2000, along with a payment receipt dated November 27, 2000, in Case no. [REDACTED]
- Two photocopied checks addressed to the Alexandria General District Court and Fairfax ASAP dated February 22, 2003, and May 8, 2003, respectively.
- A Final Report from the Alexandria ASAP dated January 29, 2004, indicating the applicant had successfully completed the program requirements for ASAP # [REDACTED]

While the applicant presented the above mentioned documents, the actual final court disposition for his September 24, 2000, arrest was not submitted.

The Federal Bureau of Investigation (FBI) fingerprint results report dated March 29, 2007, reveals that on October 17, 2004, the applicant was arrested by the Washington, D.C. Police Department for "threats." The FBI report also revealed that on September 3, 2005, the applicant was arrested for driving under the influence, a third offense, and refusal to take a breath or blood test -3rd driving while intoxicated within ten years.

On April 10, 2007, the director issued a Notice of Intent to Withdraw TPS, which advised the applicant of his October 17, 2004, and September 3, 2005, arrests. The applicant was requested to submit the final court dispositions "of every charge against you."

The applicant, in response, submitted the court documentation for his September 3, 2005, charge which indicated he was arrested and subsequently charged with driving while intoxicated, a third offense within five years, a Class 6 felony, and refusal to take a breath or blood test -3rd driving while intoxication within ten years, a Class 1 misdemeanor. The driving while intoxicated charge was reduced to driving while intoxicated, a second offense within ten years, a misdemeanor. On October 26, 2005, the applicant was convicted of the driving while intoxicated charge. The applicant was sentenced to serve 360 days in jail, ordered to pay a fine, enrolled in an ASAP and was placed on probation for three years. The prosecutor entered *nolle prosequi* for the charge of refusal to take a breath or blood test. Case no. [REDACTED]

The applicant also submitted:

1. A payment receipt dated December 15, 2005, from the Fairfax (Virginia) ASAP in Case no. [REDACTED]
2. Additional copies of the Fairfax County ASAP Payment Agreement in which the applicant agreed to pay an ASAP fee by December 27, 2000, the payment receipt dated November 27, 2000, and the letter dated May 24, 2001, in the Spanish language from the Nineteenth General District Court in Fairfax, Virginia regarding Case no. [REDACTED]
3. An additional copy of the Final Report from the Alexandria ASAP dated January 29, 2004.
4. A Recognizance issued on November 22, 2002, by the Alexandria General District Court-Traffic in Case no. [REDACTED] for a charge of driving while intoxicated-2nd conviction within five years.

5. A Form DC-210, Acknowledgment of Suspension or Revocation of Driver's License, signed on January 31, 2003, in which the applicant acknowledged that his driver's license was suspended or revoked for a year as a result of his conviction.
6. A Fairfax County (Virginia) ASAP Agreement in which the applicant agreed to pay an ASAP fee by May 22, 2003, and a payment receipt from The Commission on VASAP for Case no. [REDACTED]
7. A letter from the applicant's representative addressed to the Superior Court for the District of [REDACTED] in which the representative requested the police reports from the applicant's October 17, 2004, arrest.
8. A letter dated May 30, 2006, from Community Services Board of Prince William County (Virginia) regarding the applicant's completion of a Substance Abuse Treatment Group 1.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and withdrew the applicant's TPS on September 11, 2007.

On appeal, counsel submits the court disposition for the applicant's October 17, 2004, arrest which reveals that on January 21, 2005, the applicant was found not guilty of the charge. CCR # [REDACTED]

The applicant has provided the final court dispositions for his October 17, 2004, and September 3, 2005, arrests. However, the final outcome of the applicant's previous two driving while intoxicated charges is not known as he has failed to submit the court depositions in their entirety. In the notices dated January 28, 2004, and April 10, 2007, the director specifically indicated that each charge and disposition must be specifically identified.

The applicant is ineligible for TPS because of his failure to provide information necessary for the adjudication of his application. 8 C.F.R. § 244.9(a). Therefore, in accordance with 8 C.F.R. § 244.14(a)(1), the director's decision to withdraw TPS is 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.