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

PUBLIC COpy

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FILE: [WAC 01190 50377]

OFFICE: VERMONT SERVICE CENTER

DATE: **JAN 03 2008**

INRE: 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status (TPS) was withdrawn and an application for re-registration was simultaneously denied due to abandonment by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant claims to be 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 However, the director should have withdrawn TPS pursuant to 8 C.F.R. § 244.14(a)(1) because the applicant, by failing to provide requested court records necessary for the adjudication of his application,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, the applicant submits court documentation relating to one of his offenses and a printout of his driving record. The applicant asserts that he is unable to obtain the remaining court documents as the courts informed him that the records had been destroyed.

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).

"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 record reveals the following offenses in the state of California:

- (1) On November 2, 2002, the applicant was arrested by the Irwindale Police Department for driving under the influence, a violation of section 23152(a) VC and driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC. Case no. _____.
- (2) On November 6, 2005, the applicant was arrested by the Long Beach Police Department for driving under the influence, a violation of section 23152(a) VC.
- (3) On June 16, 2006, the applicant was arrested by the Sheriff's Office in Norwalk for driving under the influence, a violation of section 23152(a) VC.

In a notice dated October 17, 2006, the applicant was requested to submit the final court dispositions for all arrests. The applicant was granted 30 days in which to submit the requested documents. The applicant, however, failed to respond to the notice.

The director determined that the applicant had failed to submit evidence necessary for the proper adjudication of the application and denied the application on May 10, 2007.

On appeal, the applicant submits the court disposition for number two above, which reflects that on November 8, 2005, the applicant was charged with violating section 23152(a) VC, driving under the influence, and section 23152(b) VC, driving with .08 percent or more alcohol in the blood. On April 18, 2006, the applicant pled *nolo contendere* to violating section 23152(b) VC. The applicant was placed on probation for three years, sentenced to serve four days in jail and ordered to pay a fine. The remaining charge was dismissed. Case no. _____. It is noted that the court document indicates that the applicant has an alleged prior conviction of section 23152(b) VC on January 10, 2003, in Case no. _____.

The applicant also submits an unofficial printout from American Driving Records, Inc., which reflected his driving history as follows:

- On November 2, 2002, the applicant was arrested for and convicted on January 10, 2003, of driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC. Ticket no. _____
- On January 17, 2003, the applicant was arrested for and convicted on April 23, 2003, of driving while license is suspended or revoked for driving under the influence with .08 percent or more alcohol in the blood, a violation of section 14601.2 VC. Ticket **no. _1**
- On November 6, 2005, the applicant was arrested for and convicted on April 18, 2006, of driving with .08 percent or more alcohol in the blood, a violation of section 23152(b) VC. Ticket no. _

As this printout is not an official document from either the California courts or the Department of Motor Vehicles, it has little probative value and cannot be accepted.

The applicant claims that he cannot provide the court dispositions for his arrests on November 2, 2002, and January 17, 2003, because "the court told me that after a certain period of time the records are destroyed."

The applicant has the burden to establish, with **affirmative evidence**, that outstanding charges were dismissed or were in error. A statement indicating that court records have been destroyed or could not be located is not affirmative evidence and fails to meet the applicant's burden.

The applicant has failed to provide any evidence revealing the final court dispositions of his arrests in numbers one and three detailed above. The applicant is ineligible for Temporary Protected Status 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 TPS 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.