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U.S. Citizenship  
and Immigration  
Services

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**MI**

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **OCT 30 2008**

[AAO 04 164 50023, *appeal*]

[LIN 01 178 52073]

[REDACTED], *consolidated*]

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.

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**DISCUSSION:** The applicant's Temporary Protected Status (TPS) was withdrawn by the Director, California Service Center (CSC), and is now before the Administrative Appeals Office on appeal. A premature appeal was accepted by Citizenship and Immigration Services (CIS), for processing. Consequently, the case will be *sua sponte* reopened. The appeal will be dismissed and the application will be denied.

The applicant is a native and citizen of El Salvador who was granted TPS on June 29, 2001. The director subsequently withdrew the applicant's status and denied the re-registration application on February 28, 2006, when it was determined that the applicant had failed to provide court dispositions for his arrests on January 31, 2003 and November 4, 2003.

The CSC Director withdrew the applicant's TPS following 8 C.F.R. § 244.14(a)(3) which provides for withdrawal of status if the alien fails without good cause to register with CIS within thirty days before the end of each twelve-month period after the benefit is initially granted. The director should have followed the regulations at 8 C.F.R. § 244.14(a)(1) which provide for the withdrawal of TPS if the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible.

Section 244(c) of the Act, and the related regulations at 8 C.F.R. § 244.2, provide that an applicant 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.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

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 the regulations at 8 C.F.R. § 244.4(a).

The regulations at 8 C.F.R. § 244.1 define “felony” and “misdemeanor” as:

*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 reflects the following offenses:

- (1) The applicant’s Federal Bureau of Investigation (FBI) fingerprint results report shows that on January 31, 2003, the applicant was arrested by the Aspen Police Department in Aspen, Colorado, and charged with assault in the third degree.
- (2) The applicant’s FBI fingerprint results report shows that on November 4, 2003, the applicant was arrested by the Aspen Police Department in Aspen, Colorado, and charged with assault in the third degree.

- (3) The applicant's FBI fingerprint results report shows that on June 22, 2005, the applicant was arrested by the Perkin County Sheriff in Colorado, and charged with assault and harassment.

On September 1, 2005, the CSC Director sent the applicant a Notice of Intent to Withdraw indicating that the approval of his TPS would be withdrawn if he did not provide the final court dispositions for his January 31, 2003 and November 4, 2003 arrests. The applicant did not respond to the director's notice. To date, the applicant has failed to provide evidence revealing the final court dispositions of his arrests listed as Items # 1 through #3 listed 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 and deny the re-registration application is affirmed.

It is noted that the record contains a Form I-205, Warrant of Removal/Deportation, dated February 22, 2000 verifying that the applicant was removed from the United States on March 11, 2005.

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.