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U.S. Citizenship
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FILE:

[REDACTED]

OFFICE: California Service Center

DATE: **AUG 01 2007**

[LIN 01 151 50576]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was withdrawn and the re-registration application denied by the Director, California Service Center.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 claims to be a citizen of El Salvador who is seeking to maintain his Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew the approval of the application because he found that the applicant had failed to successfully reregister.

On appeal, counsel for the applicant states that the court disposition was not available at the time and submits an additional court document.

The regulation at 8 C.F.R. § 244.14 states:

- (a) Authority of the director. The director may withdraw the status of an alien granted Temporary Protected Status under section 244 of the Act at any time upon the occurrence of any of the following:
 - (1) The alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status;
 - (2) The alien has not remained continuously physically present in the United States from the date the alien was first granted Temporary Protected Status under this part. For the purpose of this provision, an alien granted Temporary Protected Status under this part shall be deemed not to have failed to maintain continuous physical presence in the United States if the alien departs the United States after first obtaining permission from the district director to travel pursuant to § 244.15;
 - (3) The alien fails without good cause to register with the Attorney General annually within thirty (30) days before the end of each 12-month period after the granting of Temporary Protected Status.

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 record reveals the following offenses:

- (1) On January 6, 2003, the applicant was arrested for Contributing to the Delinquency of a Minor, a felony, by the City of Lakewood Police Department, Lakewood, Colorado. Arrest No. 030056.

Pursuant to a letter dated February 8, 2006, the applicant was requested to submit the final court disposition for each of the charges detailed above. The applicant did not provide a disposition for the charge listed above.

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 August 17, 2006.

On appeal, counsel states "it appears the charges were never prosecuted."

The document submitted by the applicant is not a final disposition. The arrest record states that the applicant was released pending charges. It is the applicant's burden to demonstrate that the criminal charge has been resolved. If a charge has not been resolved or prosecuted the AAO is not able to tell if it was administratively closed, or if there is currently a warrant out for the arrest of the applicant for failure to appear. It is noted that the applicant failed to reveal his criminal record as required on the Form I-821 in applying for TPS. The document submitted does not clearly establish that the applicant has maintained his eligibility for TPS, and for this reason the director's decision will be affirmed.

The applicant has failed to provide any evidence revealing the final court disposition of his arrest detailed above. Again, we point out that this note is not a final court disposition and fails to establish that charges against the applicant were dismissed or in error. In essence, all of the information submitted by counsel regarding the offense listed in No. 1 above merely duplicates information already obtained by CIS from the FBI. The information establishes what was already known, namely, that the applicant had been charged with a crime; however, it falls short of providing the final disposition of this offense. The evidence, therefore, cannot be accepted. 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 the applicant's 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.