

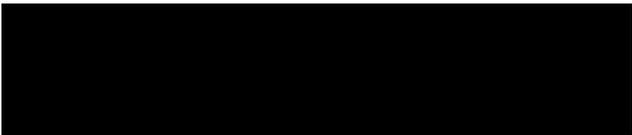


U.S. Citizenship
and Immigration
Services

GENERAL INFORMATION
provide clearly and accurately
information of personal driver

SPONSOR

WMI



FILE:



Office: CALIFORNIA SERVICE CENTER

Date: SEP 23

IN RE:

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 "R. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence.

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. 8 C.F.R. § 103.2(b)(13). A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen. 8 C.F.R. § 103.2(b)(15).

The record indicates that the applicant filed his Form I-821, Application for Temporary Protected Status, on May 9, 2001. On March 18, 2003, the applicant was requested to provide evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant was also requested to provide certified copies of final court disposition of the following felony charges filed by police officers in Tempe, Arizona, on November 22, 2001: 13-3405, marijuana violation; 13-3415, drug paraphernalia violation; and, 13-3613, contributing to the delinquency of a dependant or minor. The notice was mailed to the applicant at his address of record, but he failed to respond to the notice.

On January 27, 2004, the director denied the application because the applicant had abandoned his application by failing to respond to a request for additional evidence. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days. As the director's decision was based on abandonment, the AAO has no jurisdiction over this case. The director's error does not, and cannot, supersede the regulations. Therefore, the appeal must be rejected.

However, in the director's discretion, he may reopen the decision on a Service motion pursuant to 8 C.F.R. § 103.5(a)(5), or excuse the late filing of a new motion under the requirements of 8 C.F.R. § 103.5(a)(1)(i).

Although the applicant has not provided certified copies of the final court disposition of the charges listed above, these criminal offenses may render the applicant ineligible for TPS pursuant to section 244(c)(2)(B)(i) of the Act. However, since the appeal will be rejected, these charges will not be addressed at this time.

ORDER: The appeal is rejected.