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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

M1

[REDACTED]

FILE: [REDACTED]  
[SRC 01 264 55695]

OFFICE: Texas Service Center

Date: AUG 12 2005

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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded for further consideration and action.

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 director denied the application after determining that the applicant had abandoned his application by failing to respond to a request for evidence. Specifically, the director's August 7, 2002, Notice of Intent to Deny requested that the applicant provide final court dispositions for his July 20, 1995, arrest in Seattle, Washington, for a violation of the Controlled Substance Act, and his September 7, 2000, arrest in Irving, Texas, for assault on a family member causing bodily injury.

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 reveals that the applicant filed his application on September 4, 2001. On August 7, 2002, the applicant was requested to submit final court dispositions for his July 20, 1995, arrest in Seattle, Washington, for An unspecified violation of the Controlled Substance Act, and his September 7, 2000, arrest in Irving, Texas, for assault on a family member causing bodily injury. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on October 2, 2002. The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days.

The applicant, through counsel, responded to the director's decision on January 4, 2005. Counsel requested that the applicant's TPS application be reopened and stated that the applicant "never received any documentation from the Service regarding this final application" and asserted that the applicant had made "a good faith effort" to maintain his status.

It is noted that the applicant's response to the director's denial was received more than two years after the issuance of the director's decision. It is further noted that the applicant has still failed to submit any court records for the offenses detailed in the Notice of Intent to Deny, the Notice of Decision, and above.

The director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, since the director's decision was based on abandonment the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The case is remanded to the director for further action consistent with the above and entry of a decision.