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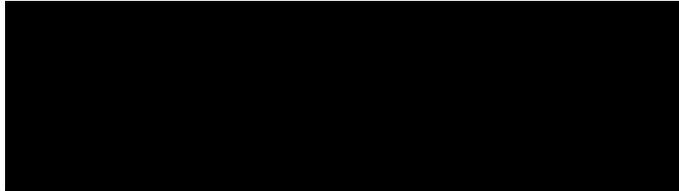


FILE: [REDACTED]  
[WAC 01 197 50571]

Office: CALIFORNIA SERVICE CENTER

Date: **AUG 17 2005**

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.

*Robert P. 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 matter 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.

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 was arrested in San Bernardino, California, on November 28, 2000, under the alias of [REDACTED] and was charged with three counts: (1) failure to appear in relation to a misdemeanor charge; (2) driving on a license suspended after a conviction of driving under the influence of alcohol; and, (3) failure to provide proof of financial responsibility.

The record reveals that the applicant filed his application on April 11, 2001. On March 21, 2003, the applicant was requested to provide: evidence of his identity, police clearances from every city he has lived in since his arrival in the United States, and the final court disposition of all arrests since his arrival in the United States. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on March 22, 2004. The director erroneously advised the applicant that he could file an appeal with the AAO within 33 days.

The applicant responded to the Notice of Decision on April 12, 2004. The applicant states that he never received the Notice of Intent to Deny. He submits evidence to establish his identity and nationality. The applicant also provided a minute order from the Superior Court of California, County of San Bernardino, indicating that he pled guilty on July 31, 2003, to failure to yield right of way in violation of section 21802(a) VC, an infraction, and failure to provide proof of financial responsibility at the scene of an accident in violation of section 16028(a) VC, an infraction. (Case Number [REDACTED]) However, the applicant failed to provide the final court disposition of his arrest on November 28, 2000. The minute order submitted on appeal does not relate to his arrest on November 28, 2000.

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, as the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001.

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 matter is remanded for further action consistent with the above and entry of a new decision.