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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

M

JAN 25 2005

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

[REDACTED]
AKA [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 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 The decision of the director will be withdrawn and the matter will be remanded for further consideration and action.

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.

On appeal, the applicant states that he did respond to the director's request for additional evidence, and he does not understand why his application was denied. He further states that he was initially granted TPS in 1991. He explains that he thought he was eligible for late registration because he had been granted relief from removal.

Pursuant to 8 C.F.R. § 244.9(c), failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution.

The record shows that the applicant filed his Form I-821, Application for Temporary Protected Status, on March 7, 2003. On June 25, 2003, the applicant was requested to provide evidence of nationality, identity, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. In response, the applicant provided evidence of identity and nationality and documentation relating to his claim of continuous residence and continuous physical presence in the United States during the requisite time frames.

On October 3, 2003, the director issued a second Notice of Intent to Deny requesting evidence to establish that the applicant was eligible for late initial registration. The record does not contain a response from the applicant.

The director denied the application on December 23, 2003, after determining that the applicant had abandoned his application by failing to respond to the Notice of Intent to Deny dated October 3, 2003.

The applicant responded to the Notice of Decision on January 27, 2004.

In his response, the applicant claims that he did respond to the Notice of Intent to Deny dated October 3, 2003, and does not understand why his application was denied. In an attempt to corroborate his claim, he submits a letter dated November 3, 2003, along with a copy of the Notice of Intent to Deny. The applicant states in his letter that he had previously been granted TPS in 1991, but subsequently lost his Employment Authorization Card and never replaced it. He indicates that he does not have any record of his 1991 TPS application, but has filed a Freedom of Information Act (FOIA) request in order to obtain evidence of his claim to have been granted TPS in 1991. The applicant states, "[b]ecause I was in legal status during 1991, I thought that I was eligible for the late registration for TPS because of the first choice that states: 'Have been in valid nonimmigrant status or been granted relief from removal.'" It is noted that the applicant does not

provide any evidence that this letter was actually mailed to Citizenship and Immigration Services (CIS), or that CIS ever received this letter from the applicant. It also is noted that the previous TPS granted to El Salvadorans terminated and did not extend automatically into the new designation granted.

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 applicant was apprehended by the United States Border Patrol near Tucson, Arizona, on February 8, 1986, and placed in deportation proceedings under record [REDACTED]

It is further noted that a Federal Bureau of Investigations (FBI) report indicates that the applicant was arrested by police officers in Los Angeles, California, on January 7, 1988, and charged with 11360(A), "selling or furnishing marijuana or hashish." He was subsequently arrested on April 13, 1988, by police officers in Los Angeles, California under the name [REDACTED] and charged with 11352(HS), "transporting a controlled narcotic substance with the intention of selling." However, the final dispositions of these arrests are not contained in the record, nor is there evidence that the applicant was requested to submit the arrest reports and the final court dispositions.

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.