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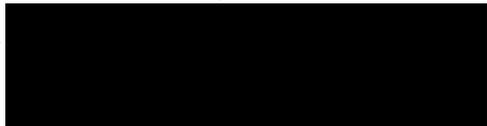


U.S. Citizenship  
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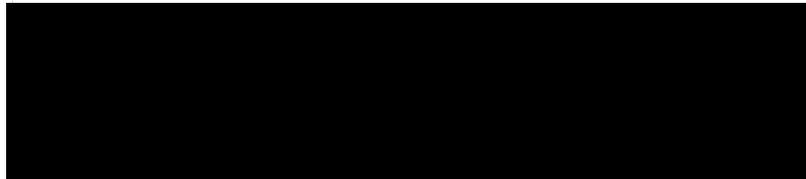
[WAC 01 168 50206]

Office: CALIFORNIA SERVICE CENTER

Date:

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.

*Cindy M. Gomez for*

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 dismissed.

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 reveals that the applicant filed his application on March 20, 2001. On December 5, 2003, the applicant was requested to submit additional evidence of continuous physical presence in the United States since March 9, 2001. The applicant was also requested to provide certified copies of the final court disposition of the following criminal charges:

1. Date of Arrest: August 8, 2000  
Law Enforcement Agency: Police Department, Los Angeles, California  
Charge: 245 (A)(1) PC MISD - FORCE/ADW NOT FIREARM, GBI
2. Date of arrest: October 22, 2000  
Law Enforcement Agency: Police Department, Los Angeles, California  
Charges:
  1. 23152(A) VC MISD - UND INFLNCE ALCHOL/DRUG IN VEH.
  2. 23152(B) VC MISD - .08% MORE WGHT ALCHL DRIVE VEH.
  3. 12500(A) VC MISD - UNLICENSED DRIVER

The applicant was instructed to respond to the Notice of Intent to Deny on or before February 27, 2004. The director concluded that the applicant had abandoned his application and issued a Notice of Denial on March 9, 2004. The director erroneously advised the applicant that he could file an appeal with the AAO within 33 days of the mailing date of the Notice of Decision.

The applicant responded to the Notice of Decision on March 31, 2004. The applicant submitted evidence in an attempt to establish his qualifying continuous physical presence in the United States. He also submitted evidence that he had submitted the final court dispositions previously, but that these documents had been returned to him. According to the court records, the applicant was exonerated of the charge detailed in (1) above, and the proceeding was terminated on October 20, 2000, for the following reasons: "Action not brought to court in time. Victim not in court/no contact. People cannot proceed."

On May 7, 2001, the people's motion to dismiss count three of the second offense, driving without a valid driver's license, in violation of section 12500(a) VC, was granted by the Municipal Court of Los Angeles, Hollywood Judicial District, County of Los Angeles, State of California. On May 10, 2001, the applicant was convicted in a trial by jury of charges one and two, driving under the influence of alcohol in violation of section 23152(A) VC; and driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, both misdemeanors.

On appeal, the applicant states that he responded to the Notice of Intent to Deny, but his response was mailed back to him with a notice indicating that his case had been "approved" and transferred to the National Visa Center in Portsmouth, New Hampshire. The applicant's handwritten notation on the form states, "This letter I got it back on 3-12-04 with all the documents I submitted before." The applicant also submitted the original Page 2 of the Notice of Intent to Deny that was date-stamped at the California Service Center indicating receipt of his response as March 5, 2004. It is not clear why the applicant's response to the Notice of Intent to Deny was returned to him with the notice, as the record fails to indicate whether he has any other application or petition pending before Citizenship and Immigration Services (CIS).

The applicant is ineligible for TPS under 8 C.F.R. § 244.4(a) as an alien who has been convicted of two or more misdemeanors. Therefore, the director's decision to deny the application will be affirmed.

Beyond the decision of the director, the applicant has not submitted sufficient evidence to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. Therefore, the application also must be denied for these reasons.

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 appeal is dismissed.