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U.S. Citizenship
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Services

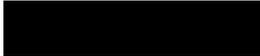
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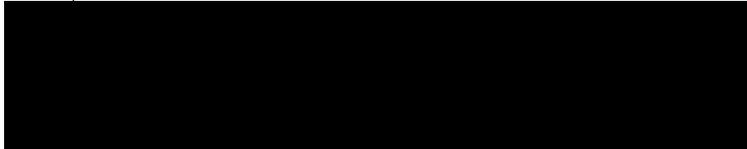
[WAC 01 244 51848]

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 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.

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 a Form I-821, Application for Temporary Protected Status, on July 2, 2001. On November 14, 2003, the applicant was requested to submit evidence of identity and nationality. He was also requested to provide a certified copy of the final court disposition of his arrest on July 23, 1990, by police officers in Los Angeles, California, on one count of "DEFACE W/PAINT/ETC," and one count of "WARRANT, BURGLARY." 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 5, 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 April 1, 2004. The applicant states that he has had a clean record since his past arrests and wants to continue living in this country. He submits a photocopy of the biographic page of his Salvadoran passport and the court disposition of the following charges relating to his arrest by police officers in Los Angeles, California, on May 17, 1988:

1. 459 PC MISD - Burglary
2. 664-487 VC MISC - Attempt Grand Theft Auto
3. 10852 VC MISD - Tamper with Vehicle
4. 466 PC MISC - Poss/Etc. Burglary Tools

According to the court record, the applicant was convicted of all four charges. Therefore, the applicant is ineligible for TPS under 8 C.F.R. § 244.4(a), as an alien who has been convicted of a felony or two or more misdemeanors.

It is also noted that the record, 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.

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.

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.