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U.S. Citizenship
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Services



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JUN 06 2005

FILE: [REDACTED]
[WAC 01 289 56410]

Office: CALIFORNIA SERVICE CENTER Date:

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: 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
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 due to abandonment because he found that the applicant had failed to submit requested court documentation relating to his criminal record.

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 the following offenses:

1. On March 24, 1998, the applicant was arrested in Alhambra, California, and charged with receiving stolen property, a felony. (Agency Case Number [REDACTED])
2. On March 15, 2000, the applicant was arrested in Los Angeles, California, and charged with one count of "CARRY/BRING F/ARM TO VEH." (Agency Case Number [REDACTED])
3. On February 1, 2001, the applicant was arrested in Los Angeles, California, and charged with two counts of burglary in violation of section 459 PC, a felony.

On November 28, 2003, the applicant was requested to submit evidence of identity and nationality. He was also requested to provide the final court disposition of an unspecified arrest and the final court disposition of any other violations or arrests since his arrival in the United States. The applicant was given until February 20, 2004, to submit the documentation requested in the notice.

The director concluded that the applicant had failed to provide information necessary for the adjudication of his application and issued a Notice of Denial based on abandonment, on March 2, 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.

However, the applicant did respond to the Notice of Intent to Deny. His response was received at the California Service Center on March 3, 2004, one day after the issuance of the Notice of Denial. In his response, the applicant provided a photocopy of the biographic pages of his Salvadoran passport and a copy of the final court disposition of the offenses detailed in No. (3) above. On February 13, 2001, the applicant was convicted in the Municipal Court of Airport Branch Judicial District, County of Los Angeles, State of California, of one count of burglary in violation of section 459 PC, a felony, on February 13, 2001. (Docket [REDACTED]) The second felony burglary charge was dismissed in the furtherance of justice.

On appeal, the applicant states that he was late in responding to the Notice of Intent to Deny because he was working out of state as a truck driver from November 15, 2003 until February 24, 2004. He submits an affidavit from an individual who identifies himself as the applicant's employer [REDACTED] attesting to this statement.

The applicant has failed, both in response to the Notice of Intent to Deny and again on appeal, to provide the final court disposition of the offenses detailed in Nos. (1) and (2) above. Nevertheless, since the applicant has been convicted of a felony, he is ineligible for TPS under the provision of 8 C.F.R. § 244.4(a).

Beyond the decision of the director, the applicant has not provided 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.

It is noted that the applicant has a pending asylum application as an American Baptist Church v. Thornburgh Settlement Agreement (ABC) class member.

It is further noted that there is a discrepancy in the applicant's claimed date of birth on the Form I-821, Application for Temporary Protected Status, and the photocopy of his Salvadoran passport contained in the record of proceedings. On the Form I-821, the applicant indicated that he was born on January 26, 1979. The applicant's Salvadoran passport lists his date of birth as December 26, 1978.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.