



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date:

MAR 21 2005

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:

[REDACTED]

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 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.

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 April 11, 2001. On January 28, 2004, the applicant was requested to submit certified copies of the final court disposition of the following criminal charges:

1. Date of Arrest: November 23, 1999
Law Enforcement Agency: [REDACTED]
Charge: 01:148(A) PC, Obstructs/resists public Officer/etc.;
2. Date of Arrest: May 10, 2003
Law Enforcement Agency: [REDACTED]
Charge: 01:243(E)(1) PC - Bat: Spouse/Ex. Spouse/Date/etc.

The applicant responded to the Notice of Decision on February 19, 2004; however, he did not provide the requested documentation. He submitted only a Record Check Supplemental Information form he completed in order to receive a copy of his criminal record.

The director denied the application on March 1, 2004.

On March 29, 2004, counsel for the applicant filed an appeal from the director's decision. On appeal, counsel states that the applicant did, in fact, respond to the Notice of Intent to Deny. Counsel asserts that the applicant cannot provide a copy of the final court disposition of his charges because no charges were ever filed in connection with his two arrests. Counsel submits a document dated March 18, 2004, from the Superior Court of California, County of Santa Cruz, indicating that no criminal history has been found in Santa Cruz Superior Court records for [REDACTED] date of birth July 10, 1974. However, the Federal Bureau of Investigation Identification Record contained in the record of proceeding indicates that the applicant was arrested under the name [REDACTED]. Courts and law enforcement agencies conduct criminal record searches based on the exact name and date of birth provided by the individual requesting the record search. Therefore, the court document does not corroborate counsel's assertion that no charges were pressed in connection with the applicant's arrests.

Since the applicant did in fact respond to the Notice of Intent to Deny, the director's decision will be withdrawn, and the matter will be remanded for issuance of a new decision based on the evidence of record.

It is noted that, to date, the applicant has not provided a copy of the final court disposition of the charges listed above.

It is further 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 pay statements and Internal Revenue Service (IRS) Forms W-2 submitted by the applicant all bear dates in 1999 and 2000, prior to the beginning of the eligibility period. The airmail envelopes addressed to the applicant at [REDACTED] California," are not sufficient to establish the applicant's qualifying continuous residence and continuous physical presence. The applicant has submitted only two affidavits to establish his qualifying continuous residence and continuous physical presence. These letters alone are not sufficient to establish that the applicant meets the continuous residence and continuous physical requirements described in 8 C.F.R. §§ 244.2(b) and (c).

The applicant has also failed to provide proof of identity. Pursuant to 8 C.F.R. § 244.9(a)(1), proof of identity and nationality, in descending order of preference, may consist of a passport, a birth certificate accompanied by photo identification, and/or any national identity document from the alien's country of origin bearing photo and/or fingerprint. The applicant has not provided any type of official national photo identification document to establish his identity.

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.