

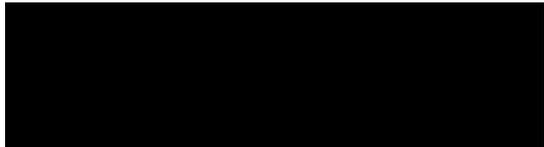
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**U.S. Citizenship  
and Immigration  
Services**

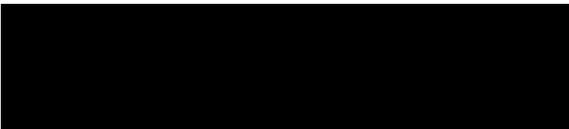
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FILE: [REDACTED]  
[WAC 01 172 50505]

OFFICE: CALIFORNIA SERVICE CENTER DATE: **NOV 03 2005**

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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center. The application is now before the Administrative Appeals Office on appeal. The matter will be remanded for further consideration and action.

The applicant claims to be 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 was arrested on December 18, 1998, in Norwalk, California, and charged with one count of theft of property in violation of section 484(a) PC, a misdemeanor.

On February 25, 2004, the applicant was requested to submit the final court disposition of all arrests since his arrival in the United States.

The director incorrectly concluded that the applicant had abandoned his application and issued a Notice of Denial on April 10, 2004; however, the applicant did respond to the Notice of Intent to Deny. His response was received at the California Service Center on April 7, 2004, three days prior to the issuance of the Notice of Decision.

In response to the Notice of Intent to Deny, the applicant provided the final court disposition of his arrest. The court document indicates that he was convicted of theft of property, a misdemeanor, on March 29, 2004. The applicant has overcome the sole basis for the denial of the application. Further, since the applicant has only been convicted of one misdemeanor, he is not ineligible for TPS based on his criminal record.

However, the application may not be approved. The applicant has not provided sufficient credible 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. In addition, the record reveals that he previously presented himself as, and was employed under the name of, [REDACTED]. Further, the Federal Bureau of Investigation fingerprint results report indicates that he presented himself as a citizen of Mexico at the time of his arrest. The director shall provide the applicant with an opportunity to submit evidence to establish his identity and nationality and his qualifying continuous residence and continuous physical presence in the United States during the requisite periods, and shall issue a new decision based on all evidence submitted in support of the TPS application.

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.