



U.S. Citizenship  
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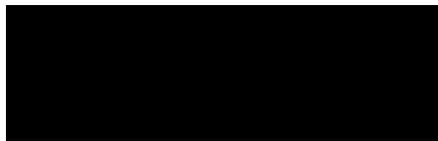
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FILE: [REDACTED]  
[EAC 01 177 53981]

Office: VERMONT SERVICE CENTER

Date: NOV 21 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.

  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The case 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 record reveals that the applicant filed his initial TPS application on April 11, 2001. On April 24, 2002, the applicant was requested to submit evidence establishing his qualifying continuous residence in the United States as of February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. In addition, the applicant was requested to submit final court dispositions for criminal charges in his record. The record does not contain a response from the applicant; therefore, the director denied the application due to abandonment on May 8, 2003. On May 27, 2003, the applicant submitted a motion to reopen, stating that he had moved from his previous address and had not received any correspondence or request for additional evidence regarding his TPS application.

The director reopened the case, and on April 6, 2004, sent a notice of intent to deny requesting that the applicant submit additional evidence to establish his continuous residence and continuous physical presence in the United States during the requisite periods. The director determined that the applicant had not responded to the notice of intent to deny, and denied the application on July 16, 2004.

The director's decision states: "You were granted an opportunity to submit any evidence you thought would overcome the grounds of denial. The record does not include a response to this Service's notice. Therefore, the grounds for denial have not been overcome." The decision, however, does not indicate the specific reason for the denial. Under 8 C.F.R. § 103.3, "the officer shall explain in writing the specific reasons for denial."

On appeal, the applicant submits additional documentation, including a United States Postal Service (USPS) Certified Mail and Express Mail receipt indicating that he sent a package to the service center on April 26, 2004. Subsequent to receipt of the appeal, the applicant's response, dated stamped as received by the service center on April 26, 2004, was entered into the record on November 23, 2004.

The Federal Bureau of Investigation (FBI) report, contained in the record of proceeding, reflects the following:

1. On March 12, 1993, under the alias of [REDACTED] applicant was arrested by the Mineola [New York] Police Department, and charged with "ATTEMPTED ROBBERY 1<sup>ST</sup>," Agency [REDACTED] Class C Felony.

Although the initial request for additional evidence had requested final court dispositions and documentation relating to the applicant's criminal charges, the applicant stated in his motion to reopen that he had never received the 2002 request for additional evidence. After reopening the case, the director's notice of intent to deny dated April 6, 2004, failed to apprise the applicant of the need to submit certified final court dispositions and documents related to the criminal charges associated with his fingerprints.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, does not contain the court's charging documents and final dispositions for the applicant's arrests. Nor is there evidence in the record that the applicant was requested to submit the court documents of all his arrests.

The case will, therefore, be remanded so that the director may accord the applicant an opportunity to submit arrest reports and the court's final dispositions of all his arrests. The director shall enter a new decision.

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 director's decision is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.