

Identifying data deleted to
prevent disclosure of unwarranted
intrusions of personal privacy

CLASSIFIED COPY

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MM



FILE: [REDACTED]
[EAC 01 202 52249]

Office: Vermont Service Center

Date: NOV 28 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: 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.

Robert P. Wiemann
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 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 his application on May 23, 2001. On May 24, 2002, the applicant was requested to submit evidence to establish his residence in the United States as of February 13, 2001, and his physical presence in the United States from March 9, 2001, to the date of filing his application. In addition, the director noted in his request that a criminal history check revealed that the applicant was arrested on February 22, 1997, and on April 27, 1997. As such, the applicant was also requested to submit the final dispositions of every charge against him, and if convicted of any charge, evidence whether the charge was classified as a felony or misdemeanor. The applicant responded to the Notice of Decision on February 13, 2003, and submitted the court dispositions for his past arrests.

The director denied the application on April 1, 2003, for abandonment; however, as the applicant did respond on February 13, 2003, this denial was made in error. Therefore, the case will be remanded and the director shall consider the evidence submitted prior to issuing 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 case is remanded to the director for further action consistent with the above and entry of a decision.