



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 31 2005
[WAC 01 185 54926]

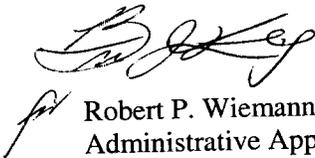
IN RE: Applicant: [REDACTED]

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, 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 case will be remanded to the director for further 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 April 19, 2001. On March 26, 2004, the applicant was requested to submit: (1) evidence to show that he had continuously resided in the United States since February 13, 2001; (2) evidence to show that he had been continuously physically present from March 9, 2001, to the date of filing the application; (3) evidence to establish his nationality and identity; and (4) certified copy of the final court disposition of his arrest on December 26, 2002, in Storm Lake, Idaho, for Count 1, burglary in the 1st degree, and Count 2, willful injury. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and denied the application on May 5, 2004. The director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

The applicant responded to the director's decision on June 29, 2004. The applicant states that when he first sent the requested evidence, he failed to include the court disposition of his arrest. He provided the requested court disposition of his arrest noted above.

The director accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. However, as the director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the director shall consider the applicant's response as a motion to reopen.

The record of proceeding contains the records of the Iowa District Court and a printout from the National Crime Information Center (NCIC) reflecting the following offenses:

- (1) On December 26, 2002, in the State of Iowa, County of Buena Vista, Item No. 02-40949, the applicant was indicted for Count 1, burglary in the 1st degree, § 713.3 Code of Iowa, a class B felony; and Count 2, willful injury, § 708.4(2) Code of Iowa, a Class D felony. On April 28, 2003, the applicant was convicted of Count 2. He was sentenced to imprisonment for a term not to exceed 5 years, and ordered to pay \$1,300 in fines and costs; sentence of incarceration and payment were suspended and the applicant was placed on probation under the supervision of the Third Judicial District Department of Correction Services for a term of 2 years. The final disposition as to Count 1 is not reflect in the record.
- (2) The NCIC report shows that on November 18, 2001, in Storm Lake, Iowa, the applicant was arrested for consumption/public intoxication, Iowa statute (IA) 123.46, a misdemeanor. The report shows that the applicant was subsequently convicted of this offense. However, the actual final court disposition of this arrest is not contained in the record.

- (3) The NCIC report shows that on May 26, 2002, in Storm Lake, Iowa, the applicant was arrested for consumption/public intoxication, IA 123.46, a misdemeanor. The report shows that the applicant was subsequently convicted of this offense. However, the actual final court disposition of this arrest is not contained in the record.
- (4) The NCIC report shows that on September 2, 2002, in Storm Lake, Iowa, the applicant was arrested for consumption/public intoxication, 3rd or subsequent offense, IA 123.46-B, a misdemeanor. The report shows that the applicant was subsequently convicted of this offense. However, the actual final court disposition of this arrest is not contained in the record.

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.