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U.S. Citizenship
and Immigration
Services

MI

FILE: [REDACTED]
[SRC 01 172 56237]

Office: TEXAS SERVICE CENTER

Date: SEP 02 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 for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas 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 submit certified final court disposition(s) relating to his arrest by the Santa Monica, California, Police Department on May 3, 1992, on the charge(s) of GOVT VIOL of EMERGENCY CURFEW, under the alias of [REDACTED]

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 initial TPS application on April 9, 2001. On January 29, 2002, the applicant was requested to submit additional evidence establishing his continuous residence in the United States since February 13, 2001, and his continuous physical presence in the United States since March 9, 2001. On February 20, 2002, the applicant was requested to submit certified final court dispositions for all of his arrests. On January 29, 2003, the applicant was again requested to submit additional evidence establishing his continuous physical presence in the United States during the requisite period. The applicant responded to these requests, submitting evidence relating to his identity, nationality, continuous residence, and continuous physical presence in the United States. The applicant also submitted police and court record searches in the name of [REDACTED] from Fort Worth and Dallas County, Texas, reflecting that no records were located in those locations under that name.

On September 17, 2003, the director issued another notice of intent to deny, specifying the charges as identified above, and indicating that the name given at the time of the arrest was [REDACTED]. 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 November 28, 2003.

The director advised the applicant that, while the decision could not be appealed, the applicant could file a motion to reopen within 30 days. The applicant responded to the director's decision; however, the director erroneously accepted the applicant's response as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.

It is noted that the evidence submitted includes a letter dated December 24, 2003, from the Superior Court, Los Angeles, California, indicating that the Criminal Clerk's Office, Santa Monica Court, Limited Jurisdiction, indicated: "no record of any outstanding misdemeanor matters, active or inactive,..."; a final court disposition, and /or arrest record, was requested and not a report on any "outstanding" matters pending.

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.