

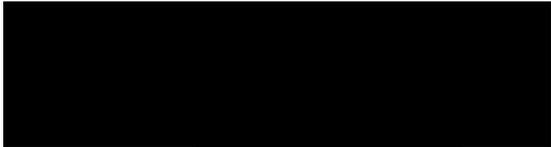
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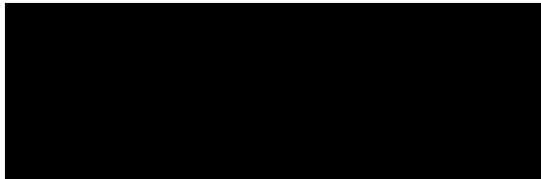
[EAC 01 164 55774]

Office: VERMONT SERVICE CENTER

Date: **JAN 26 2006**

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.

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 matter 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. Although a Form G-28, Notice of Entry of Appearance as Attorney or Representative, has been submitted, the individual named is not authorized under 8 C.F.R. § 292.1 or 292.2 to represent the applicant. Therefore, the applicant shall be considered as self-represented and the decision will be furnished only to the applicant.

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 Federal Bureau of Investigation fingerprint report contained in the record of proceedings reflects the following offenses:

1. On January 27, 1997, the applicant was arrested in Annapolis, Maryland, and charged with "1<sup>ST</sup> DEG ASSLT."
2. On December 23, 1998, the applicant was arrested in Millersville, Maryland and charged with "THEFT LESS \$300."
3. On October 17, 2000, the applicant was arrested in Millersville, Maryland, and charged with "FTA CRIMINAL COMMONLAW" and "FTA COMMONLAW."

The record reveals that the applicant filed his application on March 29, 2001. On January 4, 2002, the applicant was requested to submit the final court disposition of the charges detailed above. The record does not contain a response from the applicant; therefore, the director concluded that the applicant had abandoned his application and issued a Notice of Denial on July 1, 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 Notice of Decision on July 25, 2003. On motion, the applicant stated that he attempted to send the requested documents to the Vermont Service Center by the stated deadline, but his response was returned to him as undeliverable mail because he had not written the complete mailing address of the Vermont Service Center on the envelope. The applicant provided court documents relating to the offenses detailed above.

The director erroneously 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 matter will be remanded and the director shall consider the applicant's response as a motion to reopen.

It is noted that the applicant subsequently filed a second Form I-821, Application for Temporary Protected Status, on August 30, 2002. The director denied that application on June 10, 2004, because the applicant failed to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The director also denied the application because the applicant failed to provide the final court disposition of all arrests since his arrival in the United States. There is no indication in the record that the applicant has filed an appeal from the denial of his second TPS application.

It is further noted that the record of proceeding, as it is presently constituted, does not contain sufficient evidence to establish the applicant's qualifying continuous residence and continuous physical presence in the United States during the requisite periods.

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.