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JUL 25 2006

FILE:



OFFICE: CALIFORNIA SERVICE CENTER

DATE:

[WAC 02 101 57209]

IN RE:

Applicant:



APPLICATION:

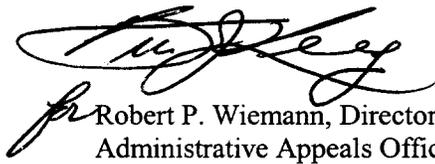
Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

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, 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 claims to be 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 of proceeding contains the Federal Bureau of Investigation (FBI) fingerprint results report revealing the following offenses:

- (1) Arrested on September 29, 1994, in Burbank, California, for "ASSLT WITH A F/ARM ON PERSON WT, ETC," a felony. The applicant subsequently submitted the arrest report from the Burbank Police Department indicating that the applicant was arrested on September 29, 1994, and charged with Count 1, assault with a deadly weapon (firearm), 245(a)(2) PC, a felony; Count 2, unlicensed driver, 12500(a) VC, a misdemeanor; Count 3, unlicensed driver, 12500(a) VC, a misdemeanor; and Count 4, unlicensed driver, 12500(a) VC, a misdemeanor.
- (2) Arrested on March 16, 1999, in Los Angeles, California, for taking vehicle without owner's consent, a felony.

On December 4, 2002, the applicant was requested to submit the final court dispositions of the charges listed in the FBI report (Nos. 1 and 2 above). He was advised that the records must be obtained from the court rather than from the arresting police department or sheriff's office. Because the applicant, in response, furnished documentation from the police department, the director concluded that the applicant had abandoned his application and denied the application on May 29, 2003. 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 July 2, 2003. He submits the court disposition relating to his arrest listed in No. 1 above. He also submits a letter from the Superior Court, Los Angeles, California, indicating that the court has no record of a 1999 arrest (No. 2 above). There is no evidence, however, that the applicant's case (No. 2 above) was heard at this court. It may be assumed that the applicant would have known where the court hearing took place.

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

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.