



U.S. Citizenship
and Immigration
Services

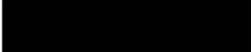
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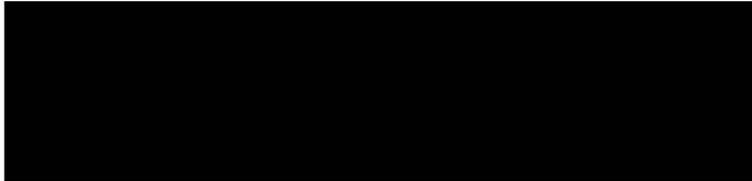
Office: CALIFORNIA SERVICE CENTER

Date: JUN 15 2006

[WAC 05 282 59793]

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
Robert P. Wiemann, Chief
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 matter will be remanded for further consideration and 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 reveals that the applicant filed his application on August 20, 2001. On January 19, 2002, the applicant was requested to submit evidence to establish his identity and nationality and additional evidence to establish his qualifying continuous residence and continuous physical presence in the United States during the requisite periods. In response, the applicant submitted a photocopy of his 2001 Internal Revenue Service (IRS) Form W-2. Wage and Tax Statement.

On March 18, 2004, the applicant was requested to provide the final court disposition of his arrest in Santa Ana, California, on June 11, 2001, on the charge of "driving under the influence of alcohol." 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 April 26, 2004. The director erroneously advised the applicant that, he could file an appeal with the AAO within 33 days of the date of the Notice of Denial.

The applicant responded to the Notice of Denial on May 26, 2004. The applicant states that he provided all the requested documents "long ago." He did not submit the final court disposition of his arrest on June 11, 2001.

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 record of proceeding, as it is presently constituted, does not contain an official photo identification document to establish the applicant's identity. It is noted that the English translation of the applicant's Salvadoran birth certificate incorrectly identifies the applicant's date of birth as "September 9, 1974." The applicant's Salvadoran birth certificate identifies his date of birth as "September 27, 1974." Therefore, this translation cannot be accepted as a correct and accurate translation. The record also 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.