



U.S. Citizenship
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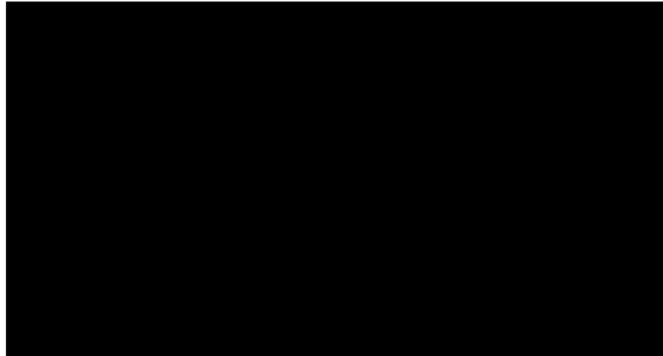


AUG 17 2007

FILE: [REDACTED]
[WAC 02 044 55852]

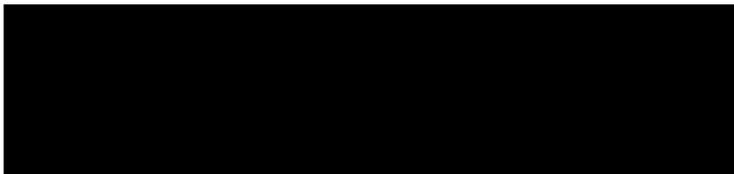
Office: CALIFORNIA SERVICE CENTER Date:

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:



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, 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 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.

On appeal, the applicant submits a statement and additional evidence.

The record reveals the following offenses:

1. On November 22, 1994, the applicant was arrested in Los Angeles, California, and charged with "spouse beating," a felony.
2. On February 14, 1998, the applicant was arrested in Norwalk, California, under the name "John Doe" and charged with disorderly conduct under the influence of drugs or alcohol in violation of section 647(f) PC, a misdemeanor.
3. On October 16, 1998, the applicant was arrested in Los Angeles, California, under the name [REDACTED] and charged with one count of possession of a narcotic controlled substance, a felony, and one count of defacing property, a misdemeanor.
4. On May 24, 2001, the applicant was arrested in Los Angeles, California, and charged with driving under the influence of alcohol.

On February 27, 2003, the applicant was requested to submit additional evidence of continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. The applicant was also requested to provide the final court disposition of the arrest detailed in No. 4 above. 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 August 7, 2003. The director erroneously advised the applicant that he could file an appeal with the AAO.

The applicant responded to the denial decision on August 29, 2003. The applicant states that he provided all of the requested documentation in response to the Notice of Intent to Deny dated February 27, 2003. The applicant provides a court document revealing that he was convicted on June 20, 2001, in the Municipal Court of Los Angeles, Metro Branch Judicial District, County of Los Angeles, State of California, on one count of driving under the influence of alcohol with a blood alcohol content of 0.08% or greater in violation of section 23152(b) VC, a misdemeanor. (Docket Number [REDACTED]) The applicant also submits a photocopy of a State of California "Notice of Completion Certificate" dated October 23, 2001, indicating the applicant completed the DIAL Alcohol & Drug Education Program in Los Angeles, California, along with a cash receipt from the DIAL Alcohol & Drug Education Center dated October 3, 2001; a photocopy of a "Notice of

Outstanding Failures to Appear (FTA) and Failures to Pay (FTP),” dated August 2, 2001; a photocopy of a DIAL Alcohol & Drug Education Center Completion Certificate dated October 11, 2001; and, a letter dated June 6, 2000 from [REDACTED], Chemical Dependency Counselor, Dignity Center, Didi Hirsch Community Mental Health Center in Los Angeles, California, stating that the applicant successfully completed the center’s Drug Diversion Program on June 6, 2000.

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.

The record contains the final court disposition of a separate arrest not listed in the applicant’s fingerprint results report. The court document reveals that the applicant was convicted on February 3, 1997, in the Municipal Court of Los Angeles, Hollywood Judicial District, County of Los Angeles, State of California, on one count of vandalism in violation of section 594(a) VC, a misdemeanor. (Date of Arrest: February 2, 1997; Case Number [REDACTED]) The applicant has provided evidence establishing that he has been convicted of two misdemeanor offenses. Furthermore, the applicant has failed to provide court documents reflecting the final court dispositions of the arrests detailed in Nos. 1, 2, and 3 above.

It is further noted that the applicant’s 2006 Federal Bureau of Investigation (FBI) fingerprint results report revealed that the applicant was also arrested in Los Angeles, California, on October 12, 2005, and charged with two counts of failure to appear after written notice. The director must provide the applicant with an opportunity to provide the final court disposition of this 2005 arrest.

Finally, it is noted that the applicant was previously placed in removal proceedings, but the proceedings were administratively closed by the Board of Immigration Appeals to enable the applicant to apply for TPS.

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.