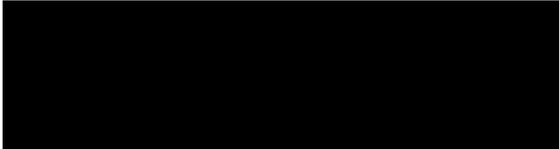




U.S. Citizenship
and Immigration
Services

identifying data deleted to
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invasion of personal privacy

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FILE:



OFFICE: SAN FRANCISCO

DATE: **AUG 20 2007**

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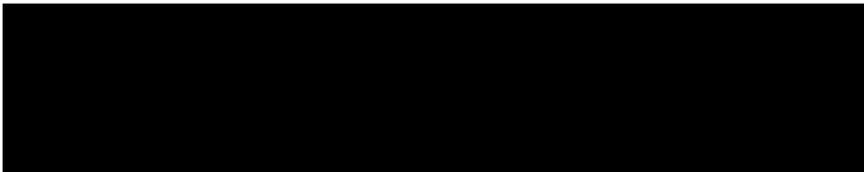
IN RE:

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 District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The case will be remanded to the district director for further 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 district director denied the application after determining that the applicant had abandoned his application based on his failure to appear for a scheduled interview. The district director further determined that the applicant is ineligible for TPS because he is inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Act based on his conviction of 11350 H&S, possession of narcotic controlled substance.

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 May 24, 2001. On March 14, 2007, the applicant was requested to appear for a scheduled interview on March 20, 2007, regarding his TPS application. The applicant failed to appear for the interview. The district director concluded that the applicant had abandoned his application and denied the application on March 30, 2007. The district director erroneously advised the applicant that he could file an appeal from this decision within 30 days.

Counsel responded to the district director's decision on April 11, 2007. He asserts that the "evidence does not support the district director's decision that the applicant is inadmissible because of a conviction for violation of California Health and Safety Code 11350."

The district director accepted the applicant's response as an appeal and forwarded the file to the AAO. However, as the district director's decision was based on abandonment, the AAO has no jurisdiction over this case. Therefore, the case will be remanded and the district director shall consider the applicant's response as a motion to reopen.

Additionally, based on information contained in the Federal Bureau of Investigation fingerprint results report, the district director determined that the applicant was ineligible for TPS because he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act based on his felony drug conviction.

The instructions regarding the usage of the FBI report, and the provisions of 28 C.F.R. § 50.12, state, in part:

If the information on the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. The deciding official should not deny the license or employment based on the information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so.

The record of proceeding, in this case, is devoid of the complete, actual final court disposition of the applicant's arrest to establish that he was in fact convicted of the crime listed in the FBI report. Nor is there evidence in the record that the applicant was provided the opportunity to submit the court dispositions of all of his arrests.

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.