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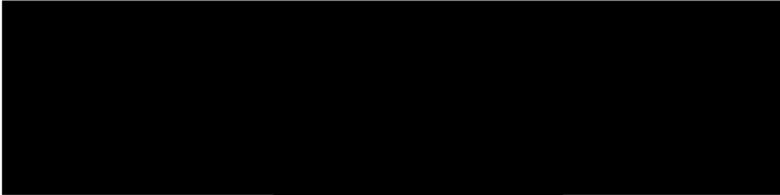
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

MMI

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FILE: [REDACTED]
[WAC 01 258 62559]

OFFICE: California Service Center

DATE: JUN 14 2007

IN RE: Applicant: [REDACTED]



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. It is now before the Administrative Appeals Office (AAO) on a motion to reopen. The case will be remanded to the director for further consideration and action.

The applicant is a 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 on the ground of abandonment after the applicant failed to provide requested police clearances and final court dispositions of his arrests in the United States.

The record shows that the applicant filed an initial Form I-821, Application for Temporary Protected Status, on July 26, 2001. The director issued a notice of intent to deny (NOID) on March 1, 2004, giving the applicant 30 days to provide police clearances from every city in which he had lived since arriving in the United States as well as a copy of the certified final court dispositions of any arrests he had in the United States. The NOID was based on the findings of a fingerprint results report from the Federal Bureau of Investigation (FBI), dated February 17, 2004, revealing that the applicant had been arrested twice in California – (1) on August 6, 1990, by the Los Angeles Police Department, on a charge of inflicting corporal injury on his spouse or cohabitant, and (2) on November 1, 2001, by the Bell Police Department, on a charge of disorderly conduct, “TOLUENE”. The 30-day response period expired with no response from the applicant. On April 22, 2004, therefore, the director denied the TPS application on the ground of abandonment, in accordance with the regulation at 8 C.F.R. § 244.9(c).

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 official who denied the application – in this case, the Director, California Service Center – may treat the applicant’s appeal as a motion for the purpose of granting the motion. *See* 8 C.F.R. § 103.5(a)(8).

The applicant filed a Form I-290B, Notice of Appeal to the AA[O], on May 25, 2004, and submitted a letter from the County of Los Angeles, Sheriff’s Department Headquarters, dated May 3, 2004, indicating that the applicant had no record with that department in the years 1999-2004, but that he had “possible records with the following department: DATE: 11/01/2001, AGENCY: BELL PD, CHARGE: 647 PC.”

The director erroneously accepted the applicant’s Form I-290-B and accompanying document as an appeal instead of a motion to reopen and forwarded the file to the AAO. 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.

The AAO notes that the latest FBI fingerprint results report of the applicant, dated April 24, 2006, reveals that the applicant in addition to the two earlier arrests previously cited, was arrested again on September 29, 2005, by the Sheriff’s Office in Norwalk, California, on a charge of possessing a narcotic/controlled substance. In continuing proceedings before Citizenship and Immigration Services, the applicant must submit evidence of the final court dispositions of all charges against him.



As always in these proceedings, the burden of proof rests solely with the applicant. *See* 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 the entry of a decision.